

STATE OF COLORADO,

San Miguel County, } ss.

I, Martha F. Carriere, Clerk of the District Court of San Miguel County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of Corrected Decree.

in a certain cause pending in said Court, on the xxxxxxxxxxxxxxxx side thereof, wherein  
IN THE MATTER OF THE TOWN OF RICO ETC.

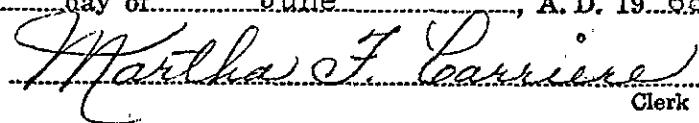
SIGNED BY JUDGE GEORGE V. KEMPF

XPIXXXXXXXandX

XXDefendantXX..

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Telluride, this

12th day of June, A. D. 1968.



Clerk

By

Deputy

IN THE DISTRICT COURT  
IN AND FOR THE COUNTY OF SAN MIGUEL  
AND STATE OF COLORADO

CIVIL ACTION NO. C-2220.

IN THE MATTER OF THE APPLICATION )  
OF THE TOWN OF RICO, a Municipal )  
Corporation of the State of Colorado, )  
FOR AN ORIGINAL GENERAL AD- )  
JUDICATION FOR THE PRIORITY OF )  
RIGHTS TO THE USE OF WATER IN )  
WATER DISTRICT NO. 69 OF THE STATE ) DECREED  
OF COLORADO FOR NON-IRRIGATION )  
PURPOSES, AND A SUPPLEMENTAL GEN- )  
ERAL ADJUDICATION OF THE PRIORITY )  
OF RIGHTS TO THE USE OF WATER IN )  
WATER DISTRICT NO. 69 OF THE STATE )  
OF COLORADO FOR IRRIGATION PURPOSES )

NOW, on this 11th day of June,  
A. D. 1968, this matter coming on for final hearing and adju-  
dication upon the Findings and Report of Clide W. McClean,  
Referee heretofore appointed herein, and to whom this matter  
was by order of Court heretofore entered on 18th day of  
April, A. D. 1966, referred for the purposes in  
said order mentioned; as well upon the several findings upon  
the evidence produced, as upon the evidence taken by and be-  
fore the said referee in this matter; all of which Findings  
and evidence have been, and are, duly filed among the records  
of this court; and the Court having been fully advised in the

premises, and being fully satisfied from the returns of notices, certificates of Publication, certificates of the Clerk of this Court, and the referee, that the said testimony returned was taken upon due and lawful notice in all respects according to the provisions of the statutes in such case made and provided, and the rules and orders of this Court in that behalf in this matter made and entered; and further that all parties interested have been notified of the time of the filing of the Findings of the Referee and Proposed Decree; and that the notices of the time set for filing exceptions in this matter to the Report and Findings and Proposed Decree, and of the time set for final hearing thereof, have been duly served upon all the parties entitled to notice under the Order of Court in this behalf heretofore entered; and further, that all interested in this proceeding and entitled to notice in any stage of the proceedings therein, have at all times been duly notified according to law and the orders of this Court; and the report of the referee together with the evidence, findings, returns of service, affidavits and notices, have been found to be in due form, including the petition for continuance of the first hearing for filing of claims and taking of evidence thereon, from the date fixed in said notice of August 5, 1966 to September 6, 1966, for the perfecting of service of notices. And the Court having now here in open Court heard all parties and their attorneys as far as they desire to be heard respectfully touching the several matters herein, and being fully advised in the premises:

HEREBY ORDERS, ADJUDGES AND DECREES that the several findings of the referee as reported to and filed in this Court,

be in all things approved and confirmed, and that they be taken, deemed and held in all respects as the findings of the Court in this matter; that all and singular, the several ditches, pipelines, wells and other direct flow diversion structures, and their enlargements and/or extensions, hereinafter set forth, be Ordered, Adjudged and Decreed to have the several numbers and priorities to the use of the waters of the several streams and other sources respectively in said Water District Number Sixty-nine, as hereinafter more particularly set forth, subject, however, to the following, to-wit:

1st: No part of this decree shall in any case be taken, deemed or held to confirm, impair, or in any manner affect any claim of right or property held or claimed by any person, association, corporation or joint stock company in or to any ditch, canal, pipeline, well, spring, reservoir, or their enlargements or extensions, or any part thereof, or the land, or any part thereof, on which any such of the same may be situated, or the land held or claimed as right of way of of any or either of them; or any right, interest or claim of property whatever in or relating to any of them.

2nd: No part of this decree shall be taken, deemed or held as affecting in any manner any question or claim of right between the owners or claimants <sup>or</sup> of/under any such ditch, canal, pipeline, flume, well, spring or reservoir, or the enlargements and/or extensions, if any, thereof, as between each other; whether as part owner or shareholder therein, either as stockholder in any corporation or shareholder in any Joint stock company, or as individuals claiming or to claim the use of the waters of any stream under or through

the same, or any part thereof; nor shall it affect the right, interest or claim of any consumer or consumers of water for irrigation, power, manufacturing, storage, domestic or stock-water purposes, whether as part owner, lessee, shareholder or stockholder in any corporation, association, or joint stock company owning, holding or controlling the same, or as purchaser therefrom, as against the right, interest or claims of any other party or parties interested, or claiming right or interest in or to such ditch, canal, flume, pipeline, well, spring or reservoir as owner, lessee or part owner thereof, or as shareholder or stockholder in any joint stock company, association or corporation claiming the same or any part thereof as purchaser of water therefrom, neither shall it affect any claim of priority made or resisted as between parties using water for said purposes, or either of them, from the same ditch, canal, flume, pipeline, well, spring or reservoir.

3rd: No part of this decree shall affect in any way any right, claim or interest now or hereafter held or claimed to any appropriation of water made after the closing of testimony touching the construction or enlargement of the ditch, canal, flume, pipeline, well, spring or reservoir by means of which such appropriation may be or shall have been made.

4th: No part of this decree shall be taken, deemed or held as giving or adjudging to any claimant, or present or future representatives of any claimant, of any ditch, canal, flume, pipeline, well, spring, or other diversion structure, or reservoir, or the enlargement or extension thereof, or to any person or persons holding, using or controlling the same, any right to take and carry or hold by means of any such ditch, canal, flume, pipeline, diversion structure, or reservoir, or

the enlargement or extension thereof, herein mentioned, or by virtue of any appropriation herein adjudged, any water from any natural stream, or other source in said Water District, except to be applied to the use for which such appropriation has been made, or to which it may be transferred according to law, subject, however, to the provisions hereinafter set out with relation to domestic water rights, nor to allow diversion of water for anything except lawful and beneficial uses, nor to allow any excessive use or waste of water whatever.

5th: No part of this decree shall be taken, deemed or held to grant to any ditch, canal, pipeline, flume, well, spring or other diversion structure, or to the enlargement or extension to any of such, a priority of right to a greater quantity of water than the actual carrying capacity thereof; nor to any reservoir, or enlargement thereof any greater quantity of water than its original or enlarged capacity.

6th: No part of this decree shall be taken, deemed or held as giving or adjudging to any claimant, or present or future representatives of any claimant of any ditch, canal, flume, well, pipeline, spring, or other diversion structure, or the enlargement or extension thereof, or to any reservoir, or the enlargement thereof, or to the person or persons holding, using or controlling the same, any right to take and divert continuously the volume of water appropriated, but only the right to divert the same at such time, or times, as the same may be reasonably and actually needed; nor any right to take and divert the full quantity of water appropriated, except when the same may be reasonably and actually needed;

all for the purposes and uses for which the appropriation has been made.

7th: Water shall not in any case be diverted or held for mere purpose of speculation; and in all cases the right to flow and use of water under the several appropriations herein found and adjudged, shall be limited in time as well as volume or quantity, to the reasonable and actual needs of the land, or other beneficial use, for which the same shall have been appropriated whether the water be applied by one or two or more ditches, canals, ditches, pipelines, or other diversion structures, and/or reservoirs or their enlargements or extensions; and cumulative appropriation and use of water by different ditches, canals, or other diversion structures, and/or reservoirs for the same land in excess of the actual amount necessary for the irrigation of the land, or other beneficial purposes, shall not be allowed.

8th: This decree shall be taken, deemed and held as determining and establishing the several priorities of right involved herein by actual appropriation of water from the streams, and other sources, in said Water District Number Sixty-nine, for irrigation, domestic, stockwatering, municipal, industrial, recreation, and any and all other beneficial purposes and uses, by means of the several ditches, canals, flumes, pipelines, wells, springs, reservoirs, and any and all other diversion structures, reservoirs, and the enlargements and extensions thereof, in said water district, concerning which testimony has been offered in this matter, each according to the construction, enlargement or extension

thereof, with the amount of water to have been appropriated ther by.

9th: That in all cases in this decree the priority numbers fixed and awarded are determined by their respective historic dates of appropriation regardless of the purpose for which the appropriation is made, and where two or more ditches or diversion structures, of whatever kind or nature, have identical priority dates, the respective priority numbers shall govern and control, unless otherwise found and decreed.

10th: That concerning the several ditches, canals, pipelines, wells, springs, or other diversion structures, reservoirs and the enlargements thereof, hereinafter awarded CONDITIONAL decrees, the Court Finds as to each such ditch, canal, pipeline, well, spring, reservoir, or other diversion or storage structure, or the enlargement or extension thereof, if any, that it was commenced and is constructed, or is to be constructed, with sufficient capacity for the irrigation of non-irrigated lands thereunder, or the supplemental irrigation of lands inadequately supplied with water, or for such other beneficial and lawful uses for which such conditional decree is granted; That because of circumstances shown by the evidence and sufficient in law, it is, or has been, impossible, or impractical, for the claimant, or claimants, to complete the appropriation by the completion of the diversion project, or by the application of the water to the beneficial use or uses designed; That at the date of this decree an inchoate and uncompleted right of appropriation exists which, if completed and perfected by the application of the water

to the actual beneficial purpose designed with due and reasonable diligence, should be allowed to relate back and take priority from the date of initiation of appropriation by construction of such diversion structure, as hereinafter found.

11th: That with respect to domestic and stockwatering rights diverted by and through any irrigation structure, the Court Finds and Decrees that to the extent such rights can be satisfied under an existing irrigation decree without in any way or manner enlarging the diversion from the stream, or other source of supply, either by increasing the diversion, or causing or continuing diversion at any time or times when such diversion is not necessary to accomplish the purpose for which said priority was awarded, same be, and hereby is, confirmed without the necessity of an independent decree; and in each of the individual awards hereinafter set out in this decree wherever applicable, this provision shall be considered a part thereof the same as though it were fully set out therein. And conversely, in all cases where the exercise of such right entails the diversion of a greater quantity of water than such irrigation, or other, decree provides; or requires the diversion of water at such time or times as water is not reasonably required for such irrigation, or other purpose, such right in order to maintain its priority must be specifically decreed.

And it is FURTHER FOUND, ADJUDGED AND DECREED BY THE COURT that in this proceeding the same consideration is given to domestic and stockwatering rights as to any and all other classes of rights, and their order of priority determined in the same manner and by the same rules; that is, their historic date, or date of actual appropriation of water,

determines their priority relationship as to all other claims submitted in this proceeding, but the nature of the right does not give it any precedence over priorities of any other class in this, or any other adjudication proceeding in said water district number sixty-nine.

AND THE COURT FURTHER FINDS that, as shown by the Findings and Report of the Referee on the statements of claim for irrigation purposes filed in this proceeding, and the evidence produced in support thereof, that there is a wide variation in the amount of water per acre alleged to have been applied, or which it is proposed to apply, thereunder. As to whether this is due to the variable nature of the soil, or the apparent shortage of water supply in the areas of use, is not entirely clear. Undoubtedly both are contributing factors. Therefore, the Court is of the opinion that it would be improper to establish a fixed duty of water per acre for the whole of the water district. In accordance therewith it is Ordered that the amount of award to each ditch or diversion or storage structure existing, or proposed to be constructed, for irrigation purposes be individually determined in accordance with the evidence submitted with relation thereto within the limits of the statement of claim filed thereon.

And the Court Further Finds that all of the ditches, canals, pipelines, wells, springs, and their enlargements and extensions, and the reservoirs and their enlargements, for which claims have been filed in this proceeding, as hereinafter mentioned, divert their supply of water from the Dolores River, or from the streams or subterranean flow thereof draining into said river in Water District Number Sixty-Nine of the State of Colorado.

And the Court Further Finds and Decrees that, concerning each and every ditch, canal, pipeline, well, spring, or the enlargement or extension thereof, or reservoir or enlargement, to which conditional decree is herein-after awarded, each thereof is found and allowed upon the condition that the diversion structure shall be completed, and the water diverted or stored thereby, shall be applied to the actual beneficial purpose or purposes for which awarded with due and reasonable diligence, and that same shall be limited to the accomplishment of the respective purposes found as the basis thereof, and to the total amount or quantity of water hereinafter found therefor, respectively, and shall not take effect as adjudicated priorities of water rights (except so far as allowed by statute) until the same shall have been reported, proven, confirmed and decreed by this Court in appropriate proceedings for that purpose; and shall in every case be limited in and to the proportion in which such beneficial purpose has been accomplished with due and reasonable diligence.

And the Court Further Finds that the records of the District Court of San Miguel County, Colorado, show there has been one previous adjudication proceeding in said water district No. 62<sup>1</sup> in which decree was entered on March 23, 1938. That in said decree the priorities of right to the use of water were numbered consecutively in accordance with their respective dates of initiation of appropriation regardless of the nature of the water right or appropriating structure, and that as shown therein the number of the priority last awarded therein was 46 with appropriation date July 1, 1936.

That the priorities herein granted are, by operation of law, deemed and held to be subsequent thereto, and

regardless of their respective dates of initiation of appropriation, are junior, inferior and subject to each and all of the priorities awarded in said Decree of March 23, 1938, as well as to all diversion and storage structures to which awards were made prior to their inclusion in said Water District Number Sixty-nine, as shown in the coordinated schedule of priorities in said Decree.

And the Court Therefore Finds that in numbering the priorities granted herein the same shall begin with Number 47, being the next number following the last numbered priority in said Decree of 1938.

And the Court Further Finds that in awarding District Structure numbers in this proceeding, -except reservoirs, which in this District in the past have been separately numbered, -same shall begin with Number 33, being the next number following the highest of such numbers awarded in said 1938 decree.

And the Court Further Finds that the record in the last previous adjudication proceeding in said Water District Number 69 shows only 2 reservoirs were awarded decrees, and that while the Priority Numbers thereof followed consecutively with all others in order of their initiation, the last reservoir Number was 2; and in this proceeding reservoir numbering shall begin with Number 3.

AND THE COURT FURTHER FINDS, and calls attention to the fact, that the amount of the award to each diversion or storage structure in the following schedule herein is the maximum award, and in some cases the award may be qualified or modified in the special findings hereinafter made in regard of each individual structure, -it being impractical to indicate such qualifications or modifications in detail in said schedule of awards; and reference should be made in all

cases to said individual findings and decree in order to determine such limitations, to, or modifications of, each priority awarded herein, if any.

Subject to the several hereinbefore mentioned and detailed special provisions, it is further, as to the said several ditches, canals, pipelines, wells, springs, and the enlargements and extentions, if any, thereof, originating in this proceeding; and the reservoirs and their enlargements, and the several appropriations of water by means of them respectively claimed, IT IS THEREFORE ORDERED, ADJUDGED AND DETERMINED that the numbers and names of said diversion and storage structures, and their enlargements or extensions, if any, the source or sources from which water is taken; the name or names of the claimants; the priority numbers; dates of initiation of appropriation, and the amount of cubic feet, or fraction thereof, or water per second of time, or acre feet, or fraction thereof, appropriated thereby, and the nature or purpose of appropriation, are as follows:

(Schedule beginning on following page)

## DIVERSION STRUCTURE

No.	Priority No.	Name	Claimant or Claimants	Source of Supply	Appropriation Initiation Date	Decreed or effective Date	Acreage Irrigated or purpose	Amount, Cu.Ft. or Acre Ft.
33	47	Original Rico Flume. (Present Diver- sion by means of Rico Pipe- line)	Town of Rico, a Municipal Cor- poration of the State of Colo- rado.	Silver Creek, a tributary of the Dolores River.	April 4, 1892	July 2, 1936	Municipal Domestic Industrial	0.28 Cu.Ft. ABSOLUTE. Capacity of Pipeline.
33	47	Original Rico Flume. (Present Diver- sion will be by means of pipeline)	Town of Rico, a Municipal Cor- poration of the State of Colo- rado.	Silver Creek, a tributary of the Dolores River	April 4, 1892	July 2, 1936 (This additional water was once used through the old flume, but probably not required since 1890.) GYK	Municipal Domestic Industrial	2.72 Cu.Ft. CONDITIONAL.
34	48	Tray Rose Diver- sion	Trey Rose and Lane Rose	Dolores River	June 1, 1906	July 3, 1936	Irr. 60 acres, Sprinkler System	2.00 Cu.Ft. ABSOLUTE.
3	49	Delmar Lake Reservoir  (This Reservoir also has Priorities 55 and 67 in this proceeding.)	Neil Bankston	Rinecone Creek and tributaries all tributary to Disappointment Creek, and an unnamed Gulch in S. 13, T. 41 N., R. 13 S., N.M.P.M., through Bankston Ditch	Aug. 26, 1912	July 4, 1936	Sup. Irr on 450 acres	60.00 A.Ft. ABSOLUTE, with construc- tion at 5 ft. high water level.
		Delmar Ditch	Neil Bankston	(Statement of claim filed on this ditch and later withdrawn. No testimony introduced in support thereof.)				

DATE OF THE LATEST PRIORITY AWARDED IN THE LAST PREVIOUS ADJUDICATION IN WATER DISTRICT NO. 69  
IS JULY 1, 1936. THEREFORE, ALL PRIORITIES FROM THIS POINT ON APPPEAR FROM THE EVIDENCE TO HAVE  
DIED OUT OR EXPIRED OR APPROPRIATION SUBSEQUENT THERETO, SO ONLY DATES ONLY WILL APPEAR IN THE  
OLLOWING.)

TECHNICAL NOTES

No.	Priority	Reason	Claimant	Course of Action

## APPENDIX D

Accts Rec'd	Amount
Interest	Ch. Lbs. or Accr'd Interest

35  
50  
HOLYFIELD, ROGER HOLYFIELD, ADAMS  
WALTER WILSON  
(This pitch also had  
priorities 51 and 75)

Morrison Creek, a tributary of the Salmon River, contains cyclops eggs, larvae and pupae, also from surrounding terrain.

April 1, 1938

DIRECT TYPE 2.00 cu. ft.  
RENTAL OF AIR COMPRESSOR  
15 CHP &  
SHOWER.

51 Kelvin A. Weston Kelvin J. Agents  
Water Diction

Morrison Creek, a  
tributary of Dier-  
oppabinetka Creek,  
and Wabigo and some  
ago from background  
ing terrain

APRIL 1, 1938

FUP. RUTER 3.00 OIL W.  
FOR 1224.00 NEW OIL TUB.  
30 ACRES UN-  
DER HELLIN  
A. TRADITION

52 Kelvin A. Leitch Kelvin J. King  
tion job.  
(This Wilson also has  
Priority No 76)

water and seepage from surrounding terrain, and from Morrison Creek, a tributary of Blue Spring Creek which flows into the Roaring Fork River.

APRIL 14 1938

FOR TELL. ON 3-00 CH. #  
TO serial ANTHONY.  
and RECORDED  
A 52)

53 MARTHA GRAY HOGAN MELVIN R. HOGAN  
MURKIN

*Roth, George, &  
Spiral-rayed Dill  
and other Plants*

9261 97 4033

TYPE OF  
20 ROWS.  
APRIL 10<sup>th</sup>.

37  
54 North Draw Ranch Melvin J. Kamm  
(This ranch also has  
Priority No. 73)

**Appointing Creek**

August 20 1930

TO FILL  
BOTTLE  
RESPIRATOR  
WATER  
1.00 QU.

### 3 55' Pelican Lake WELL BURNED MESSING

Wingate Creek, a tributary of the Columbia River, Oregon, about 10 miles from Maryhill, Washington.

August 1, 1940

SUPPLY ON 364,000 A. M.  
450 JARS.

DIVISION STRUCTURE

No. Priority Name	Claimant or Customer	Source of Supply	APPROXIMATION DATE	Acreage irrigated or power	Amount Cu. ft. or Acre ft.
5 56 Ethel Doleen Holvin J. Adams	Reservoir (This reservoir also has priority 7b)	Natural drainage from surrounding terrain, tributary to Disappointment Creek	July 1, 1944	For Irr. on 100 acres and creek bed	57,30 A.Ft. ABSOLUTE. (45)
7b 57 Agnes Ditch Holvin J. Adams	Net Bankers	Natural drainage tributary to Big Creek, Colorado & Municipal Corp. through an unincorporated area in S. 13, T. 41 R. 13 S., K.P.	Aug. 1, 1949	For storage in reservoir and creek bed	26.36 Cu. Ft. ABSOLUTE.
29 58 Dove Creek-Dolores River & Dove Creek, Colorado Supply Developm't Corp.	Corp. of the Dolores River trapping under permit.	2 wells in the bed of the Dolores River trapping under ground flow.	July 16, 1951	Municipal, Domestic, Industrial purposes	0.39 Cu. Ft. ABSOLUTE.
39 59 Dove Creek-Dolores River, Colorado Supply Developm't Corp.	Corp. of Dove Creek, Colorado, a Municipal Corp. corporation	2 wells in the bed of the Dolores River trapping under ground flow.	July 16, 1951	Municipal, Domestic, Industrial purposes	0.61 Cu. Ft. ABSOLUTE.
6 59 Carter Reservoir (This reservoir has priority 7b)	Holvin J. Adams and Fred Holiday	Bear Creek, a tributary of Disappointment Creek, through Carter Ditch	June 23, 1950	For Irr. on 35 acres.	36.97 A.Ft. ABSOLUTE.
40 60 Carter Ditch Holvin J. Adams and Fred Holiday	Active J. Adams	Bear Creek, a tributary of Disappointment Creek	June 23, 1950	To fill the Gandy Reservoir	6.75 Cu. Ft. ABSOLUTE.
41 61 Harrison Ditch Holvin J. Adams	Harrison Creek, a tributary of Bear Creek	Aug. 24, 1960	To fill the Harrison Reservoir	11.90 Cu. Ft. ABSOLUTE.	
42 62 Harrison Ditch Holvin J. Adams	Harrison Creek, a tributary of Bear Creek	Aug. 24, 1960	Direct Irr. on 15 acres	1.55 Cu. Ft. ABSOLUTE.	

INTERIOR SPRINGTIME  
No. Priority Date

Clemente ex  
Clemente

Source of  
Supply

APPROPRIATION  
Date

ACREAGE  
IRRIGATED  
BY PURPOSE  
AMOUNT  
OUTSTANDING  
BALANCE

7	63' Morrison Reservoir Meade Co. Adams	Morrison Creek, a tributary of Bear Creek, through the Morrison Div.	Aug. 24, 1960	To Tax. 15 acres, and Irrigated by Purpose	No. 00 A. P. ADJUSTS.
7	64' Salina Reservoir Saline Co. Adams	Morrison Creek, a tributary of Bear Creek, through the Morrison Div.	Aug. 24, 1960	To Tax. 15 additional 10 acres	27.00 A. P. CONDITIONAL.
8	65' Salina Reservoir Saline Co. Adams	Morrison Creek, a tributary of Bear Creek, through the Morrison Div.	Aug. 26, 1961	To Tax. 10 additional 55 acres	47.33 A. P. CONDITIONAL.
3	66' Rock Pasture Reservoir Republic Co. Adams (This Reservoir also has Priority No. 69)	Side drainage tributary to Beaver Creek, a tributary of the Missouri River	July 1, 1963	To Tax. 45 acres, and Stockwater	53.94 A. P. ADJUSTS.
3	67' Reliance Lake Reservoir	Pinecone Creek and tributaries, all tributary to Pinecone Creek, and an unnamed creek in 3.13, tap. N.Y. R. 23 S., N.Y. through the river, stream tributaries.	July 1, 1966	Supplemental Irr. on 40 acres	67.00 A. P. CONDITIONAL.
9	68' Rummel Reservoir Marvin J. Adams (This Reservoir also has Priority No. 71)	Rummel drainage tributary to the Rummel Creek	July 14, 1966	To Irr. 50 acres and Irrigation	74.75 A. P. ADJUSTS.

DIVISION NUMBER No. Priority No.	Grantor Name	Grantant Name or Name of Grantor	Courts of Surrey	APPROPRIATION Date	Acreage of land used for purposes	Amount, Cost of work
3 69' Dark Pasture Reservoir (This Reservoir also has Priority No. 68)	Malvin J. Adams	Site Manager, tributary to Beaver Creek, a tributary of the Dusses River	July 6, 1967	To 1 yr. 50 additional acres	36.60 A.R. 300 cu.yds.	37.00 A.R. 300 cu.yds.
6 70' Sawyer Reservoir (This reservoir also has Priority No. 59)	Malvin J. Adams and Fred Holiday	Sawyer Creek, a tributary of the Disappointment Creek, through the Gander Ditch	July 6, 1967	To 2 yr. 25 additional acres	37.00 A.R. 300 cu.yds.	37.00 A.R. 300 cu.yds.
9 72' Farnham Reservoir (This reservoir also has Priority No. 68)	Malvin J. Adams	Natural drainage tributary to Disappointment Creek	July 6, 1967 (Priorities 69, 70 and 71 of same date and right.)	To 1 yr. 20 additional acres	32.00 A.R. 300 cu.yds.	31.36 A.R. 300 cu.yds.
4 72' North Draw Reservoir (This Reservoir also has Priority No. 53)	Malvin J. Adams	North Draw, a tributary of Disappointment Creek	Sept. 13, 1967	To 1 yr. 25 additional acres and sup. water for 20 years	31.36 A.R. 300 cu.yds.	31.36 A.R. 300 cu.yds.
37 73' North Draw ditch (This ditch also has Priority No. 54)	Malvin J. Adams	North Draw, a tributary of Disappointment Creek	Sept. 13, 1967	To 1 yr. on largest part of North Draw Reservoir	7.80 cu.yds. 300 cu.yds.	7.80 cu.yds. 300 cu.yds.
5 74' Ethel Delmer Ross Reservoir (This Reservoir also has Priority No. 56)	Malvin J. Adams, Norreca Creek, a tributary of Macopee River, which also has Priority No. 54	Natural drainage tributary to Disappointment Creek	Sept. 13, 1967	To fill on largest part of Ethel Delmer Reservoir	37.70 A.R. 16,000 cu.yds.	37.70 A.R. 16,000 cu.yds.
75 75' McLean Reservoir (This Reservoir also has Priority No. 54)	Malvin J. Adams, Norreca Creek, a tributary of Macopee River, which also has Priority No. 54	74 & 75 of same age water.	Sept. 13, 1967	To supply 4,000 cu.yds. water to 1/4 A. Gandy Creek to 1/4 to 1/2 acre	4,000 cu.yds.	4,000 cu.yds.

DISBURSEMENT STATEMENT	CLAIMANT No. PRIVATE NO.	CLAIMANT No.	CLAIMANT O.R.	SOURCE OF SUPPLY	APPROPRIATION DATE	AMOUNT ACROSS TRAIL	AMOUNT TRAVELED ON TRAIL
36 To Captain A. E. Hale - Miles J. Adams (Captain Hale has probably No. 42)				Wrote and response from surrounding people, and from Hortson Creek, a tributary of the Applegate Creek, through the Salmon River 75 & 76 not to exceed \$1.00 per day.	Sept. 4th, 1867	40 miles, \$0 Additional charge, \$0. to \$1.00. to 75.	1.00 on 1st. additional charge. to \$1.00. to 75.

AND MORE PARTICULARLY with reference to the several ditches, canals, pipelines, wells, springs, sprinkling systems, and their enlargements and extensions; and the reservoirs and their enlargements, herebefore set out in the schedule of priorities in this proceeding, THE COURT FINDS AND DECREES as follows:

ORIGINAL RICO FLUME  
(Present diversion structure)  
Rico Pipeline  
or  
(Water Pipe Line of the Town)  
(of Rico, Colorado.)

TOWN OF RICO, COLORADO, a Municipal Corporation, Claimant.

DIRECT FLOW  
DIVERSION STRUCTURE NO. 33

Priority No. 47,  
ABSOLUTE,  
and  
Priority No. 47,  
CONDITIONAL.

THE COURT FINDS:

That the name of the diversion structure under which this claim was presented for adjudication was the ORIGINAL RICO FLUME. However, said diversion is now made by means of a pipe line, and in the statement on the plat thereof prepared from the 1963 survey, it is referred to as both the "Original Rico Flume" and the "Water Pipe Line of the Town of Rico, Colorado."

That the name and post office address of the claimant thereof is the TOWN OF RICO, a MUNICIPAL CORPORATION OF THE STATE OF COLORADO, Rico, Colorado.

That said flume during the time of its existence derived its supply of water from Silver Creek, a tributary of the Dolores River, in Water District No. 69.

That the approximate point of the location of the headgate of said original flume was North 76° 51' East a distance of 4589 feet from the Southwest corner of Section 25, Township 40 North, Range 11 West of the New Mexico Principal Meridian.

That said original flume was 2 feet square, inside

dimensions, approximately 3651 feet long, with a grade of 6.35 feet per 1000 feet, and carrying capacity of 20.00 cubic feet of water per second of time.

And the Court Further Finds from the Findings and Report of the Referee filed herein, -which Findings and Report are hereby approved and confirmed, -that said flume was constructed of lumber in 1882, and many years ago, the exact time not being disclosed by the evidence, fell into a state of unserviceable disrepair and decay, and in 1951 was replaced by said pipe line.

That said pipe line also derives its supply of water from said Silver Creek, but its intake was moved upstream some 3300 feet above the point of diversion the old Original Rico Flume. The location of said intake being located as follows:

The intake of said pipeline is located at a point on the South bank of said Silver Creek, which point bears North 72° 28' 51" East 7697 feet from the Southwest corner of Section 25, Township 40 North, Range 11 West of the New Mexico Principal Meridian.

That said Pipeline consists of 1370 feet of 6 inch pipe, 3651 feet of 4 inch pipe, and 1950 feet of 3 inch pipe; the Pipeline having a total length of 6971 feet.

That said pipeline has an average grade of  $\frac{1}{4}.43$  feet per 1000 feet, and a carrying capacity of approximately 0.28 of a cubic foot of water per second of time.

That the lower part of said pipeline roughly parallels the line of the Old Original Rico Flume, and discharges its water at practically the same point.

And the Court Further Finds from the record and evidence introduced in support of the initiation of appre-

priation of water by said Original Rice Flume, that at an election duly called therefor, on the 4th day of April, A. D. 1882, the qualified electors of the Town of Rice authorized the trustees thereof to issue bonds in the sum of \$22,000.00 for the construction of a system to supply water to the town for domestic and industrial purposes. That thereafter said trustees, -in conjunction with the Enterprise Mining Company, which was then operating in the immediate vicinity, - proceeded diligently with the construction of said Original Rice Flume as above described, and diverted water therethrough to the extent of 3.00 cubic feet per second of time, -the full amount of the Town's claim therein, - and applied it to the beneficial uses aforesaid.

And the Court Further Finds from the evidence and said Referee's Findings and Report, that at the time of the construction of said water supply system the Town of Rice was at the peak of mining activities in that area, and according to the best information obtainable had a population of approximately 4000. That it then required and did beneficially use the full amount of said 3.00 second feet of water. The period of such use is indefinite. The evidence shows, however, that there was in that area a steep and extensive decline in mining operations in the late eighties and early nineties, and the mining population drifted away from the town and it became only a shadow of its former self. This inevitably reduced the water requirements of the town, -to what extent cannot now be determined. That thereafter in the nineteen-twenties a short period of mining revival occurred which no doubt temporarily increased the Town's water requirements and use. The Court feels it is reasonable to assume the flume was still serviceable and in use at that

time.

And the Court Further Finds that the evidence is not clear as to when the flume became unserviceable, nor whether its use was continued until the construction of the new pipe line. However, it does show that the town continued to divert its supply of water at all times from the same source, Silver Creek, by whatever means diverted.

That as above mentioned there is no direct evidence that the original flume remained in serviceable condition and was used up until the completion of the present pipeline, and it is possible it had been out of service for sometime before that. Sometime in the late forties the Town officials began preparation for either a rehabilitation of the original flume, or a replacement for it, with the result, as shown by claimant's exhibit 1-A,-nominally, an amended map of the Original Flume, but actually a retracing of the flume and a survey of the new pipeline to replace it,- a new pipeline was constructed substantially parallel to the old flume but with a new point of diversion. That said survey was not made, however, until 1963, long after the pipeline had been constructed, and in the statement of the engineer on

the plat thereof he recites "Construction work was performed in October and November of 1951." And the evidence shows that said pipeline was completed with capacity sufficient to carry a water supply for the immediate needs of the town,- or approximately 0.28 of a cubic foot per second, with the intention on the part of the claimant, as expressed in the evidence, to continue with enlarged construction, or additional construction, as required by reason of population growth, until transportation is provided for the full 3.00 cubic feet of water per second of time which had originally been used.

And the Court Further Finds from the evidence that the movement of the point of diversion by the pipeline to a point upstream from the headgate of the Original Rico Flume approximately 3300 feet does not adversely affect any existing water right as there are no intervening diversions between said two points.

And the Court Further Finds that while the evidence is not at all conclusive, when viewed in its most favorable light, it might possibly be sufficient to show a completed appropriation of 3.00 cubic feet of water per second of time. The Town of Rico neglected to make claim in any

previous adjudication proceeding, although there were at least two within that period. Its delay for such a long period is further evidence of abandonment of water in excess of present need and transportation capacity; that is, approximately C.28 of a cubic foot of water per second of time.

And the Court Further Finds, as above stated, the Town of Rico suffered an extensive decline in population subsequent to the construction of the original Rico Flume and prior to the turn of the century; that since said time it has had one or two mild revivals but never again regained more than a minor portion of its population of the eighteen-eighties, nor the need for the amount of water then required.

A completed appropriation of water may be abandoned, as was the case here, whether or not it has been decreed. Change of conditions and long failure to use the water establish the abandonment in this case.

This, of course, has reference only to the award of an absolute, or unconditional, decree.

The Court recognizes that a municipality which is reasonably assured of future growth should be permitted to make provision for a supply of water to develop that potential, and for that purpose it is entitled to an award of a conditional priority to the use of such additional water as the evidence shows to be reasonable.

In this respect the Court Finds that mining is no

longer a major factor in the growth of the town, but replacing it is the greatly increasing demand in recent years for recreational facilities in favorably situated mountain areas, which has in many places in Colorado already occasioned extremely rapid growth, and the Town of Rico fulfills all the requirements for such development. It is located in a beautifully wooded canyon, on a main North and South highway, bordering on exceptionally fine trout stream, and in the heart of the big game territory. Within the past two years a new motel has been constructed in the town, and two new trailer courts established with a combined capacity of 60 trailers. These facts give it reasonable assurance of immediate substantial growth, and that in the near future the full 3.00 cubic feet of water per second of time will be required.

And the Court further takes notice of the fact that the per capita requirement for water has greatly increased since the initiation of this water right in 1882, and it is not necessary for the town to return to its population status of that time in order to justify the award of the same amount of water then required.

AND THE COURT further finds that the present Rico Water System consists of said pipeline hereinbefore described, the Town distribution lines, and a storage tank of 100,000 gallons capacity. That said tank serves to maintain pressure in the distribution lines and water reserve for emergencies. And in the statement of claim filed herein defendant is requesting, not only the diversion of 3.00 cubic feet of water per second of time, but the right to store water in said storage tank, or other tanks as required, to facilitate delivery of water to its customers. And the Court finds

that claimant is, and will be, permitted to store, and at all times maintain water at capacity, in said tank, or tanks as constructed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into and through said pipeline from said Silver Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of diversion and application to beneficial use for domestic, municipal, industrial and lawn watering purposes, and as the absolute portion of said Priority No. 47, so much water as will flow therethrough as now constructed, **not to exceed 0.28 of a cubic foot per second of time**, as of appropriation date April 4, 1882. and it is Further Provided that said water may be discharged into and through said 100,000 gallon tank, and the supply therein maintained at all times at capacity.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into said pipeline or lines from said Silver Creek, **for the benefit of the parties lawfully entitled thereto, under and by virtue of proposed enlarged, or additional, construction, diversion and application to beneficial use for domestic, municipal, industrial and lawn watering purposes, and as the conditional portion of said Priority No. 47, so much additional water as will flow therethrough as so enlarged, or any additional construction, not to exceed 2.72 cubic feet per second of time, as of appropriation date April 4, 1882.** CONDITIONED, HOWEVER, upon the completion of said proposed construction, di-

diversion of said additional water and its application to the beneficial uses aforesaid within the time and in the manner provided by law, or such portion thereof as may be by proof shown to have been done.

PROVIDED, However, that both the absolute and conditional portions of said priority shall be, and are, subordinate and subject to all priorities heretofore decreed in said Water District No. 69, and their effective appropriation date shall be July 2, 1936.

TROY ROSE DIVERSION

TROY ROSE AND IONE ROSE, Claimants.

DIRECT FLOW  
DIVERSION STRUCTURE NO. 34

Priority No. 48,  
ABSOLUTE.

THE COURT FINDS:

That the name of said diversion structure is the TROY ROSE DIVERSION.

That the names and post office address of the claimants are TROY ROSE AND IONE ROSE, Slickrock, Colorado.

That the records of the District Court of San Miguel County, Colorado, the County having jurisdiction of the adjudication of water rights in Water District Number 69 do not show that said diversion structure has heretofore been presented for decree.

That said structure has two points of diversion in the County of San Miguel, Colorado, and the supply of water at both points comes from the Dolores River in Water District No. 69.

That Diversion Point Number 1,-which is the upper of said two diversion points,-is located on the north bank of said Dolores River at a point whence the Northwest corner of Section 31, Township 44 North, Range 16 West of the New Mexico Principal Meridian bears North 56° 03' West 616 feet.

That Diversion point Number 2,-which is the lower of said two diversion points,-is located on the east bank of said Dolores River at a point whence the Northwest corner of said Section 31 bears south 53° 26' East 1414 feet.

That said water is diverted from the river by means of pumps from the river at the points above described. That said two pumps have a combined pumping capacity of 2.00 cu-

bic feet of water per second of time, and the water is distributed through a sprinkling system of similar capacity on approximately 60 acres of land for irrigation.

And the Court Further Finds from the Findings and Report of the Referee filed herein,-which Findings and Report are hereby approved and confirmed,- that one Mr Williams testified in relation to said diversion, that he is 83 years old; has lived in the Slickrock area since 1901 and became acquainted with the Rose place in 1908; that at that time hay was being raised on the place and water was diverted from the river by means of a dam which raised the water to the level of the headgate of the ditch which carried it to the land. That from that time on the land was occupied by several different owners and was more or less continuously irrigated and farmed. People were living on the place all the time. That some time during those years the dam washed out, and it was two or three years before a water wheel was put in to raise the water to the ditch. That this water wheel apparently served the purpose of diversion of water for said land until these claimants purchased it and installed the pumps and sprinkler system.

And the Court Further Finds from the evidence that said 60 acres of land lies adjacent to the river,-is river bottom land and is fairly sandy and gravelly and requires a large amount of water for proper irrigation. And it is the opinion of the Court that 2.00 cubic feet per second of time is not an excessive amount for the purpose.

And the Court Further Finds that the evidence satisfactorily shows that that amount of water has been in the past, and now is, applied to said acreage without waste.

The Court Further Finds that the domestic use of

of said water, mentioned in the statement of claim, is not for household use, but for stockwatering purposes only.

And the Court Further Finds the claimants are in the stockraising business, and said land is used for the production of hay and pasture necessary in the operation of their business.

And the Court is Further of the opinion, and so Finds, that the evidence as to the continuity of the irrigation of said land is sufficient to warrant invoking the benefit of the doctrine of relation to extend the date of initiation of appropriation back to the date the evidence definitely shows the land being irrigated, to-wit, 1908.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to be diverted through said pump and sprinkler system from the Dolores River, for the benefit of the parties lawfully entitled thereto, under and by virtue of the construction of the original diversion system, - latter replaced by said pump and sprinkler system, - diversion and application to beneficial use for irrigation and stockwatering purposes, and as Priority Number 4S, so much water as can be diverted thereby and therethrough as now constructed, not to exceed 2.00 cubic feet per second of time, as of historic appropriation date June 1, 1908, and decreed, or effective, date July 3, 1936; Said priority being subordinate and subject to all priorities awarded in all previous adjudication proceedings.

BELMAR LAKE RESERVOIR

NEIL BANKSTON, Claimant.

STORAGE STRUCTURE NO. 3

Priority No. 49,  
ABSOLUTE,

Priority No. 55,  
ABSOLUTE,

and  
Priority No. 67,  
CONDITIONAL.

THE COURT FINDS:

That the name of said storage structure is the BELMAR LAKE RESERVOIR.

That the name and post office address of the claimant thereof is NEIL BANKSTON, Herwood, Colorado.

That said reservoir derives its supply of water from Rincone Creek and certain of its tributaries entering above the dam thereto, and from an unnamed gulch in Section 30, Township 41 North, Range 13 West, N.M.P.S., tributary to the Dolores River, through the Bankston Ditch, all in Water District No. 69.

That the initial point of survey of the dam to said reservoir is located at a point whence the Southwest corner of Section 18, Township 41 North, Range 13 West of the New Mexico Principal Meridian bears South 29° 15' West 2151 feet.

That said reservoir as surveyed and platted in 1912 was designed to have a dam with a high water line at 35 feet; at which point the storage capacity thereof, as computed by the engineer would be 39,735,814 cubic feet of water, or 912 acre feet.

And the Court Finds from the Findings and Report of the Referee filed herein, -which Findings and Report are hereby approved and confirmed, -that work was started on the

construction of said reservoir by survey on August 26, 1912. That the then claimants, Adam Embling, W. H. Nelson and Perry L. Wood, proceeded immediately with a small amount of construction on the dam thereto, raising same to a height that permitted storage of water therein to a height of 5 feet above the bottom of the outlet, at which point, according to the capacity table appearing on the plat thereof, the storage capacity of said reservoir was 3,480,890 cubic feet, or 83 acre feet.

And the evidence of the present claimant further shows that he was acquainted with said reservoir from its inception, and that water was stored therein to the above capacity immediately after construction and applied to lands thereunder for irrigation purposes. And it further appears from the evidence that probably at the time it was the intention of said claimants to proceed diligently with the construction of the reservoir in accordance with the provisions of the statement on the plat thereof to its ultimate completion. However, the evidence of the present claimant, further shows that he acquired said reservoir and the land thereunder in 1924, and up to that time no additional work had been done theron; and that thereafter claimant continued to use said reservoir in the condition received by him until 1940.

And the evidence further shows that in 1940 the claimant did proceed with construction of said reservoir, and increased the height of the dam to 26 feet, with the spillway at 21 feet, which provided additional storage of 365 acre feet of water, and that ever since, when available, that amount has been stored therein and used for the irrigation

of additional land owned by claimant under said reservoir.

And the Court Further Finds from the evidence of claimant that it is his intention to proceed with construction of the dam to said reservoir to its designed height which will provide for the storage of water to the 35 foot level thereof, at which point the storage capacity of the reservoir will be a total of 912 acre feet, or an additional storage capacity of 467 acre feet of water over and above the capacity provided by the original and first enlarged construction of the dam to said reservoir.

And the Court Further Finds that while it is apparent from the plat, at the time the survey of said reservoir was made in 1912, it was the intention of the then claimants to proceed diligently with construction thereof to its designed capacity of 912 acre feet of water as one continuous project; the above history of construction, as outlined by the present claimant, reveals a complete lack of the diligence required by law to permit him to invoke the doctrine of relation as applicable to any portion of this claim save the original construction immediately following the survey which provided storage capacity of 30 acre feet of water.

The Court Further Finds that following the enlargement of 1940 the evidence does not show any actual work of construction on said reservoir looking toward the elevation of the dam to the point where 35 feet of water could be stored thereon, according to the said table of storage capacity. However claimant's evidence does show that he had no intention at anytime of abandoning said right, and in mitigation of his apparent neglect to proceed diligently with construction, claimant testified that he has a large acreage of land

susceptible of irrigation under this reservoir through a number of diversion and distribution ditches which he has been developing, and that it is now his intention to proceed diligently with construction of the final phase of said reservoir for the addition of said 467 additional acre feet of water storage capacity.

And therefore the Court is of the opinion, and so finds that, while the evidence is sufficient to establish claimant's right to a conditional decree for said proposed enlargement, the lapse of 27 years since the last construction work was done on reservoir constitutes a lack of such reasonable diligence in the prosecution of work on said final enlargement as would permit the relation of initiation of appropriation to the date of last construction work thereon in 1940.

And the Court Further Finds from the evidence that claimant is the owner of three or four ranches located along Disappointment Creek on which he irrigates from 350 to 400 acres for the production of hay and pasture for use in his stockraising business, upon which acreage the stored water in said reservoir is, and will be, used. That in addition to said stored water, claimant testified he also had some 4,000 second feet of decreed water cut of said Disappointment Creek which he used upon said land, but that said decreed direct flow water from said Creek is available only for a short time in the spring, and he is almost entirely dependent on said reservoir water after about the middle of June.

The Court Further Finds that the stored water in said reservoir are released into Pinecone Creek and carried therein to, and discharged into, Disappointment Creek and

transported therein to the headgates of said above mentioned ditches owned by claimant through which said water is diverted and carried to said irrigated lands. And it appears that said ditches have sufficient capacity to carry both claimant's direct flow decreed water, and the storage water in said reservoir.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and to be stored therein, from said Rincons Creek and tributaries, and from said unnamed gulch in Section 13, Township 41 North, Range 13 West, N.M.P.M. through the Bankston Ditch, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, storage and application to said beneficial uses, and as Absolute Priority No. 49, so much water as can be stored therein as now constructed, not to exceed 80.00 acre feet, as of appropriation date August 26, 1912, but by operation of law, decreed, or effective date July 4, 1936.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into said reservoir, and be stored therein, from said Rincons Creek and tributaries, and from said unnamed gulch in Section 13, Township 41 North, Range 43 West, N.M.P.M., through the Bankston Ditch, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of enlarged construction, storage and application to said beneficial uses, and as Ab-

absolute Priority No. 55, so much water as can be stored therein as so enlarged, not to exceed 365.00 acre feet, as of appropriation date August 1, 1940.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECreed BY THE COURT, that subject to said several limitations and provisions, there be allowed to flow in said reservoir, and be stored therein, from said Lincoln Creek and tributaries, and from said unnamed gulch in Section 13, Township 41 North, Range 13 West, N.W.P.M. through the Bankaton Ditch, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of proposed enlarged construction, storage and application to said beneficial uses, and as Conditional Priority No. 67, so much additional water as can be stored therein as proposed to be enlarged, not to exceed 467.00 acre feet, as of appropriation date July 1, 1966. CONDITIONED, However, upon the completion of said proposed construction, the diversion, storage and application of said water to beneficial use, for the purposes aforesaid, within the time and in the manner provided by law, or so much thereof as may be by proof shown to have been done.

BELMAR DITCH

WYL DANKUTON, Claimant.

PITTSBURGH FINDS:

That in the general statement of claim filed by claimant the above named ditch was included as Claim Number 2, and it appears that said ditch may have been surveyed at the same time as the Belmar Lake Reservoir, but was independent of the reservoir, and derived its supply of water directly from Disappointment Creek and water released from the Belmar Lake Reservoir. That its headgate is located at a point on the West bank of said Disappointment Creek whence the Southeast corner of Section 8, Township 42 North, Range 16 West of the New Mexico Principal Meridian bears North  $37^{\circ} 50'$  East 120 feet.

However, at the hearing when the other two claims in said statement of claim were heard, Mr. Armstrong, attorney for claimant, requested permission to withdraw said Claim No. 2, and no testimony was offered in support thereof.

MALVIN A. MAGPAW-DITCH

MALVIN J. ADAMS, Claimant.

HINTS AND WILSON, Attorneys for Claimant.

CROSS CLAIMS

DIVERSION STRUCTURE NO. 35

Priority No. 50,  
ABSOLUTE,  
Priority No. 51,  
ABSOLUTE,  
and  
Priority No. 75,  
CONDITIONAL.

THE COURT FINDS:

That the name of said diversion structure is the  
MALVIN A. MAGPAW-DITCH.

That the name and post office address of the claimant thereof is MALVIN J. ADAMS, Blanding, Utah.

That said ditch derives its supply of water from  
runoff and seepage from surrounding terrain, and from Morri-  
son Creek, a tributary of Disappointment Creek, in Water  
District No. 69.

That the headgate of said ditch is located at a  
point from whence the Northeast corner of Section 36, Town-  
ship 42 North, Range 14 West of the New Mexico Principal  
Meridian bears North 1° 16' East 339.7 feet.

That said ditch is 1039.5 feet long;

That it is 3.5 feet wide at high water line;

That it is 1.5 feet wide on the bottom;

That it is 1 foot deep at high water line;

That its grade is 25.1 feet per 1000 feet;

And its carrying capacity is 17.46 cubic feet of  
water per second of time.

And the Court further finds from the Findings and  
Report of the referee filed herein, -which Findings and Re-  
port are hereby approved and confirmed,-that the evidence

since said ditch was constructed and the first water run therethrough in 1938; and that a portion of said water was taken, and has been ever since, used for the direct irrigation of approximately 20 acres of land located in the North-east Quarter of Section 36, Township 42 North, Range 14 West of the New Mexico Principal Meridian, which is all of the land that can be directly irrigated thereby.

And it further appears that said ditch runs through, or along the edge of said irrigated acreage, which is used by claimant for pasturing livestock, and the water in said ditch is used, and is necessary, for the watering of said stock.

And the Court further Finds that the supply of water for said ditch is very largely waste and seepage from irrigation on adjoining land which enters the ditch both at its headgate and along its course. That, while the statement of claim alleges that said ditch derives a portion of its supply of water from Morrison Creek, the evidence does not bear this out, and when taken in conjunction with the evidence on the Melvin A. Irrigation Ditch, indicates that the latter ditch is the only one that diverts directly from Morrison Creek. That by its nature waste and seepage sustains wide variations in its quantity, and if necessary to rely upon it solely, a greater quantity is necessary when available for proper irrigation than would be if available whenever required.

And the Court Further Finds from the evidence that this is a dual purpose ditch, in that it is used both for independent irrigation on its own, and also for the purpose of

collecting and transporting water from said sources to a small collecting pond at or near the headgate of the Melvin A. Irrigation Ditch through which it is then carried as supplemental water for the irrigation of of 30 acres of land thereunder, as well as for stockwatering purposes.

That those two bodies of land upon which the water collected and carried by said Melvin A. Waste-Water Ditch is used, are entirely separate, and the Court deems it proper to award separate, or individual priorities, therefor though making them of the same date and right to pro rata the water available to the ditch.

And the Court Further Finds that said above mentioned Melvin A. Irrigation Ditch is also being presented in this proceeding for decree, and that in addition to said 30 acres presently irrigated thereby, claimant is also the owner of 40 acres susceptible of irrigation which it is his purpose and intention to proceed with reasonable diligence to develop for irrigation by said ditch. And the evidence further shows that the supply of water available to said ditch from said Morrison Creek will be insufficient for that purpose and he will be compelled to rely upon additional diversion by the Melvin A. Waste Water Ditch for a supplemental supply, when available.

And the Court Further Finds that, while the evidence is rather meagre concerning the claim for a conditional priority for the irrigation of said additional 40 acres under the Melvin A. Irrigation Ditch, he is inclined to consider it sufficient to warrant such award. However, it does not show sufficient diligence in placing said acreage under irrigation to sustain the right of relation of the award back

to the initiation of appropriation in 1938; and since no other definite date of initiation is fixed in the evidence, the Court is constrained to determine and fix it arbitrarily as of the date of presenting <sup>claim</sup> the herein, September 11, 1967.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into and through said ditch from said waste and seepage resulting from irrigation on adjacent land, or otherwise, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of construction, diversion and application to said beneficial uses, and as Absolute Priority No. 50, so much water as will flow therethrough as now constructed, not to exceed 2.00 cubic feet per second of time, as of Appropriation Date April 1, 1938.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, that subject to said several limitations and provisions, there be allowed to flow into and through said ditch from said waste and seepage resulting from irrigation on adjacent land, or otherwise, for the benefit of the parties lawfully entitled thereto, under and by virtue of enlarged diversion and application to beneficial use for supplemental irrigation on said 30 acres of land irrigated by the Kelvin A. Irrigation Ditch, and as Absolute Priority No. 51, so much water as will flow therethrough as now constructed, not to exceed 3.00 cubic feet per second of time. Said priority being of equal date and right to available water with priorities 50 and 52 herein decreed, to-wit: April 1, 1938.

PROVIDED that when said two ditches are in use simultaneously for the irrigation of said 30 acres, the combined diversion thereby shall not exceed 3.00 cubic feet of water per second of time.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into and through said ditch from said waste and seepage resulting from irrigation on adjacent land, or otherwise, for the benefit of the parties lawfully entitled thereto, under and by virtue of proposed enlarged diversion and application to beneficial use for supplemental irrigation on said 40 additional acres under said Kelvin A. Irrigation Ditch proposed to be irrigated, and as Conditional Priority No. 75, so much water as will flow therethrough as now constructed, not to exceed 4.00 cubic feet per second of time, as of Appropriation Date September 11, 1967.

CONDITIONED, However, upon the completion of said additional diversion and application to said beneficial use within the time and in the manner provided by law. AND PROVIDED, that when said two ditches are used simultaneously for said purpose, the combined diversion shall not exceed 4.00 cubic feet of water per second of time.

MELVIN A. IRRIGATION DITCH

MELVIN J. ADAMS, Claimant.

DIRECT FLOW  
DIVERSION STRUCTURE NO. 36

Priority No. 52,  
ABSOLUTE,  
and  
Priority No. 76,  
CONDITIONAL.

THE COURT FINDS:

That the name of said diversion structure is the  
MELVIN A. IRRIGATION DITCH.

That the name and post office address of the claim-  
ant thereof is MELVIN J. ADAMS, Blanding, Utah.

That said ditch derives its supply of water from  
Morrison Creek, a tributary of Disappointment Creek, from  
waste and seepage from surrounding terrain, and from waste  
and seepage collected and transported thereto by the Melvin  
A. Waste-Water Ditch, all in Water District No. 69.

That the headgate of said ditch is located at a  
point whence the Northeast corner of Section 36, Township  
42 North, Range 14 West of the New Mexico Principal Meri-  
dian bears North 0.52° East 1379.2 feet.

That said ditch is 2714.1 feet long;  
3.5 feet wide at high water line;  
1.5 feet wide on the bottom;  
1.0 foot deep at high water line;  
has a grade of 5.41 feet per 1000 feet;  
and a carrying capacity of 7.62 cubic foot of water  
per second of time.

And the Court Further Finds from the Findings and  
Report of the referee filed herein, -which Findings and Report  
are hereby approved and confirmed, -that the date of initia-

tion of appropriation by said ditch is April 1, 1938, and that said water was then, and has been ever since, used for irrigation on approximately 30 acres of land located in the Northeast Quarter of Section 36, Township 42 North, Range 14 West of the New Mexico Principal Meridian.

And it further appears from the evidence that claimant is in the livestock business and uses said land for growing hay and pasture grasses upon which he grazes his stock, and that the water in said ditch is used, and is necessary, for watering of said stock.

And the Court Further Finds that the supply of water for said ditch is partly waste and seepage collecting in said Morrison Creek, and partly waste and seepage running directly in said ditch, supplemented by waste and seepage collected in the Melvin A. Waste-Water Ditch and carried thereto. That by its nature waste and seepage water is very unreliable and suffers wide variations in quantity. If necessary to rely solely upon it, a greater quantity is necessary when available, for proper irrigation than would be if it were available whenever required.

And the Court Further Finds from the evidence that in addition to said 30 acres presently irrigated by said ditch, claimant is the owner of 40 acres susceptible of irrigation thereby, which it is his expressed purpose and intention to develop and prepare for irrigation with due diligence and is asking a conditional decree therefor.

And the Court Further Finds that, while the evidence is rather meager concerning said plan and purpose of further irrigation under said ditch, he is inclined to consider it sufficient to warrant such award. However the evidence does not contain any information as to whether it was

part of the original plan in constructing the ditch, or whether it came into existence at a later date. If a part of the original plan, the lack of any progress in perfecting the appropriation since 1938 bars the application of the doctrine of relation. And since no other date of initiation is established in the evidence, the Court is constrained to determine and fix it arbitrarily as of the date of filing the claim herein, -September 11, 1967.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into and through said ditch from said Morrison Creek and waste and seepage running directly into said ditch, and waste and seepage collected in said Melvin A. Waste-Water Ditch and carried therethrough, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of original construction, diversion and application to beneficial use for the irrigation of said 30 acres, and for stockwatering purposes, and as Absolute Priority No. 52, so much water as will flow therethrough as now constructed, not to exceed 3.00 cubic feet per second of time, as of Appropriation Date April 1, 1935.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into and through said ditch from said Morrison Creek, and from waste and seepage flowing directly into said ditch, and from waste and seepage collected in said Melvin A. Waste-Water Ditch and carried thereto, for the benefit of the parties lawfully entitled

thereto, under and by virtue of proposed enlarged diversion, and application to beneficial use for the irrigation of said additional 40 acres, and as Conditional Priority No. 76, as much water as will flow therethrough as now constructed, not to exceed 4.00 cubic feet per second of time, as of Appropriation Date September 11, 1967. CONDITIONED, HOWEVER, upon the completion of said additional diversion and its application to the beneficial use aforesaid, within the time and in the manner provided by law. AND PROVIDED, that when said two ditches are used simultaneously for said purpose, the combined diversion shall not exceed 4.00 cubic feet of water per second of time.

NORTH DRAW RESERVOIR

MELVIN J. ADAMS, Claimant.

RESERVOIR NUMBER 4

Priority No. 53,  
ABSOLUTE,  
and  
Priority No. 72,  
CONDITIONAL.

THE COURT FINDS:

That the name of said storage structure is the NORTH DRAW RESERVOIR.

That the name and post office address of the claimant thereof is MELVIN J. ADAMS, Blanding, Utah.

That the reservoir derives its supply of water from North Draw, a tributary to Disappointment Creek, in Water District No. 69; That said reservoir appears to be an off-stream reservoir, and the water therefor is diverted from said North Draw and carried to it by the North Draw Ditch.

That the initial point of survey of the high water line of said reservoir is at a point whence the Northeast corner of Section 25, Township 42 North, Range 14 (east) of the New Mexico Principal Meridian bears North 62° 49' East 1569.5 feet.

That the maximum height of the dam is 19 feet, behind which water is stored to a depth of 14 feet.

That the total capacity of the reservoir as now constructed, according to the computation of the engineer, is 13.6 $\frac{1}{2}$  acres feet.

And the Court Further Finds from the Findings and Report of the referee filed herein, -which Findings and Report are hereby approved and confirmed, -that while the statement on the plat thereof recites work was commenced

on said reservoir by survey on September 1, 1952, that refers only to the date of the survey, and the evidence shows the actual construction of the reservoir occurred many years prior to that date, and that water was first stored therein and put to beneficial use in 1938 by claimant's predecessor in title. That claimant acquired the reservoir and the land it irrigated in 1940, and ever since has used said stored water for irrigation on about 20 acres of land located in the Northeast Quarter of the Northeast Quarter of Section 25, Township 42 North, Range 14 West of the New Mexico Principal Meridian.

And the Court Further Finds from the evidence that claimant has no other water from any source to apply on said land, the soil of which consists of a kind of sandy clay and probably requires for proper irrigation about the ordinary amount of water.

That claimant is in the stockraising business and frequently pastures stock on this land, and at such times the water from the North Draw Reservoir is used for stock-watering purposes.

And the Court Further Finds from the evidence that it is the present intention of claimant to enlarge said reservoir and store additional water therein for the irrigation of another 25 acres of land lying thereunder and susceptible of irrigation thereby. Just when said intention became fixed in his mind is not disclosed, and there is nothing in the evidence to indicate that this was part of the intention at the time of the construction of the original reservoir. However it is evident it did exist prior to the time the claim statement was filed herein for the adjudication of said reservoir.

and the Court Further Finds that the evidence does not contain any direct reference to the extent of such enlargement other than sufficient to impound water for the irrigation of said 25 additional acres. And the Court Further Finds that it is not possible to definitely determine the duty of water in this area. This claimant has introduced evidence on a considerable number of claims in this proceeding, and there is no uniformity in the amount of water per acre asked therein. That in the present claim 13.64 acre feet of water is asked, and has been used, for the irrigation of 20 acres. In the opinion of the Court this would only furnish one or two transitory irrigations. Further, the Court is not advised of the feasible physical extent of such enlargement, nor water supply therefor or cost relation to benefit resulting. Therefore, if he is justified by the evidence in granting a conditional award to said reservoir in any amount, he is impelled to the conclusion that it must be in reasonable proportion to the amount per acre awarded under the original construction, and not in accordance with what he considers the ordinary duty of water. Applying this rule liberally, the Court Finds that said conditional award should be limited to an account, when added to the absolute award herein, would provide 1.00 acre foot of water per acre for the land irrigated and to be irrigated, to-wit: 31.36 acre feet.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and be stored therein, from said North Draw, a tributary of Disappointment Creek,

through the North Draw Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of original construction, diversion, storage and application to beneficial use for the irrigation of said 20 acres and for stock watering purposes, and as Absolute Priority No. 53, so much water as can be stored therein as now constructed, not to exceed 15.64 acre feet, as of Appropriation Date August 1, 1938.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THIS COURT that, subject to said several limitations and provisions, there be allowed to flow into said reservoir, and be stored therein, from said North Draw, a tributary of Disappointment Creek, through the North Draw Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of proposed enlarged construction, diversion, storage and application to beneficial use for the irrigation of an additional 25 acres, and as Conditional Priority No. 72, so much additional water as can be stored therein as proposed to be enlarged, not to exceed 31.36 acre feet, as of appropriation Date September 11, 1967. CONDITIONED upon the completion of said proposed construction, the diversion, storage and application of said water to beneficial use, for the purposes aforesaid, within the time and in the manner provided by law, or so much thereof as may be by proof shown to have been done.

NORTH DRAW DITCH

MALVIN J. ADAMS, Claimant.

DIRECT FLOW  
DIVERSION STRUCTURE NO. 37

Priority No. 54,  
ABSOLUTE,  
and  
Priority No. 73,  
CONDITIONAL.

JURISDICTION:

That the name of said diversion structure is the  
NORTH DRAW DITCH.

That the name and post office address of the claim-  
ant thereof is MALVIN J. ADAMS, Blanding, Utah.

That said ditch derives its supply of water from  
North Draw, a tributary of Disappointment Creek, in Water  
District No. 69.

That the headgate of said ditch is located at a  
point on the East bank of said North Draw whence the South-  
east Corner of Section 24, Township 42 North, Range 14 West  
of the New Mexico Principal Meridian bears South 64° 35' East  
a distance of 4906 feet.

That the depth of said ditch at high water line is  
1.5 feet;

That the width of said ditch at high water line is  
3.5 feet;

That the bottom width of the ditch is 2.0 feet;

That the length of said ditch is 4434 feet;

That the grade of said ditch is 5.00 feet per 1000  
feet;

And its carrying capacity is 11.8 cubic feet of water  
per second of time.

And the Court Further Finds from the Finding and  
Report of the Referee filed herein, -which Findings and Re-

port are hereby approved and confirmed, -that while the statement on the plat thereof recites work was commenced on said ditch by survey on September 1, 1962, that refers only to the date of the survey, and the evidence shows the actual construction of the ditch occurred many years prior to that date, and that water was first diverted thereby and transported to, and discharged into the North Draw Reservoir for storage therein, and put to beneficial use in 1936 by claimant's predecessor in title. That claimant acquired said ditch and reservoir, and the land irrigated thereby, in 1940, and ever since has used said water for the irrigation of about 20 acres of land located in the Northeast Quarter of the Northeast Quarter of Section 25, Township 42 North, Range 14 West of the New Mexico Principal Meridian.

That this ditch, so far as the evidence shows, is not used for direct irrigation on any land. Its sole duty being to supply water for filling said North Draw Reservoir, which reservoir is also presented in this proceeding for decree, and which has a present capacity of 13.64 acre feet.

That claimant is in the stockraising business and frequently pastures stock on said land, and at such times the water in said ditch and reservoir is used for stockwatering purposes.

And the Court is of the opinion, and so Finds, that the diversion of 4.00 cubic feet of water per second of time by said ditch is sufficient to its present storage capacity of 13.64 acre feet.

The Court further Finds from the evidence that it is the present intention and purpose of claimant to enlarge said North Draw Reservoir and store more water therein for the irrigation of an additional 25 acres of land lying there-

under susceptible of irrigation located in the above described sub-division.

That the evidence does not show just when said intention became fixed in the mind of claimant. At the time said ditch and reservoir were surveyed it is evident that it did not exist as no mention of it was mentioned in the statement on the plat thereof prepared by the engineer, and that was done in September of 1962. However it is evident the claimant had reached a decision on the enlargement prior to the preparation of his claim statement on said reservoir as it is contained therein.

And the Court Further Finds that the evidence and claimant's Exhibit No. 1,-plat and statement of said reservoir and feeder ditch,-shows said ditch to presently have a carrying capacity of 11.8 cubic feet of water per second of time! Which capacity the Court Finds is sufficient to carry water for both the original reservoir and the proposed enlargement thereof, but that not all of said water is entitled to the same appropriation date.

The Court has hereinbefore discussed in the awards made to said North Draw Reservoir the quantities of water to be awarded to said reservoir for the irrigation of said 20 acres presently irrigated and 25 acres proposed to be irrigated, and the Court Finds that 4.00 cubic feet of water per second of time is sufficient to fill the reservoir as now constructed, and 7.80 second feet to fill the proposed enlargement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree, there be allowed

to flow into and through said ditch from said North Draw, a tributary of Disappointment Creek, for the benefit of the parties lawfully entitled there to, under and by virtue of appropriation by construction, diversion and storage in the North Draw Reservoir and placed to beneficial use for irrigation of said 20 acres, and for stockwatering purposes, and as Absolute Priority No. 54, so much water as will flow therein as now constructed, not to exceed 4.00 cubic feet per second of time, as of appropriation Date August 1, 1963.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT THAT, SUBJECT to said several limitations and provisions, there be allowed to flow into and through said ditch from said North Draw, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlarged diversion, storage in the proposed enlargement of the North Draw Reservoir, and its diversion and beneficial use for irrigation of said additional 25 acres of land, and as Conditional Priority No. 75, so much water as will flow therein as now constructed, not to exceed 7.50 cubic feet per second of time, as of appropriation date September 11, 1967. CONDITIONED, However upon the completion of diversion thereof and its storage and application to said proposed beneficial use within the time and in the manner provided by law.

STREET, NEARBY RESERVOIR

MELVIN J. ADAMS, Claimant.

STORAGE STRUCTURE NO. 5

PRIORITY NO. 56,  
ACUTE,  
AND  
PRIORITY NO. 74,  
CONDITIONAL.

THE COURT FINDS:

That the name of said storage structure is the  
MELVILLE BEMBAR RESERVOIR.

That the name and post office address of the claim-  
ant thereof is MELVIN J. ADAMS, Blanding, Utah.

That said reservoir derives its supply of water  
from drainage from the surrounding area, a portion of which  
appears from the evidence to be picked up in a ditch feeding  
into the reservoir. That said water would all be tributary  
to Disappointment Creek if not impounded.

That the initial point of survey of said reservoir  
is located at Station 10-00, from which point the Northeast  
corner of Section 25, Township 41 North, Range 14 West of the  
New Mexico Principal Meridian bears North 67° 41' 30" East  
6102.9 feet.

And the Court Further Finds from Claimant's exhibit  
No. 1,-plan and statement of said reservoir,-that the maximum  
height of the dam to said reservoir is 14.11 feet. And that,  
"The accompanying capacity table gives the area in acre-feet  
and the total capacity of the reservoir in cubic feet and  
cubic feet for each foot in depth from the contour line 90 to  
contour line 100 high water line." Which capacity is stated  
to be 27,302 acre feet.

And the Court further finds from the Findings and  
Report of the Referee filed herein,-which Findings and Re-

port are hereby approved and confirmed,-that actual construction was begun on said reservoir on or about April 1, 1954, and was completed diligently and water stored therein to the extent of the above mentioned capacity of 87,302 acre feet. That said water was diverted therefrom each year and applied to the irrigation of approximately 100 acres of pasture land ever since. That the land irrigated lies in the Northeast Quarter of Section 26, Township 41 North, Range 14 West of the New Mexico Principal Meridian.

And the Court Further Finds from the evidence that claimant is in the stockraising business, and that he pastures at times as many as 1500 head of sheep on this irrigated pasture. That during such time or times said stock is entirely dependant on the water from said reservoir for drinking purposes.

And the Court Further Finds from the evidence, and said Findings and Report, that it is the intention and announced purpose of the claimant to enlarge said reservoir and store additional water therein for the purpose of irrigating an additional 25 acres thereunder and susceptible of irrigation thereby. Just when that intention became fixed in the mind of claimant the evidence does not disclose. However it is evident it existed prior to the time of filing the claim statement for the adjudication of said reservoir herein, as a request for an award of said additional water is contained therein.

And the Court Further Finds that the evidence does not contain any direct evidence, or reference, to the extent of the physical enlargement of said reservoir other than sufficient to impound water for the irrigation of said additional 25 acres. And the Court Further Finds that it is dif-

ficult from the evidence on this and other claims presented in this proceeding to determine the approximate duty of water in this district. This claimant has presented evidence on a large number of claims and there is no uniformity in the amount of water claimed thereunder. That in this particular claim 37.30 acre feet are asked for, and have been used on approximately 100 acres of land; and in the opinion of the Court that amount is far short of sufficient for proper all season irrigation. Further the Court is not apprized of the feasible extent of the enlargement, either as to water supply or cost relation to result benefit. Therefore, if he is justified by the evidence in granting a conditional award to said reservoir enlargement in any amount, he is impelled to the conclusion that it must be in reasonable proportion to the amount per acre awarded under the original construction, and not in accordance with what he considers the ordinary duty of water. Applying this rule liberally, the Court finds that said Conditional award should be limited to an amount, when added to the absolute award herein, would provide 1.00 acre foot of water per acre for the land irrigated and to be irrigated, to-wit: 37.70 acre feet.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into, and be stored in said reservoir from natural drainage from surrounding territory tributary to Disappointment Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion, storage and application to beneficial use for irrigation on said 100 acres of land and for stockwatering purposes, and as Absolute Priority No. 56, as

such water as can be stored therein as now constructed, not to exceed 67.30 acre feet, as of appropriation date July 1, 1914.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THIS COURT that, subject to said limitations and provisions, there be allowed to flow into, and be stored in said reservoir, from natural drainage from surrounding territory tributary to Disappointment Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlargement of said reservoir, diversion, storage and application to beneficial use for the irrigation of an additional 25 acres, and as Conditional Priority No. 74, so much water as can be stored in enlargement as proposed to be constructed, not to exceed 37.70 acre foot, as of appropriation date September 11, 1967. PROVIDED, however, upon the completion of said enlarged construction, the diversion, storage and application of said water to the beneficial use aforesaid within the time and in the manner provided by law. PROVIDED, said priority is of equal date and right with Priorities 72, 73, 75 and 76 herein.

BANKSTON DITCH

NEIL BANKSTON, Claimant.

APPLICATION NUMBER NO. 38

Priority No. 57,  
ABSOLUTE.

THE COURT FINDS:

That the name of said diversion structure is  
the BANKSTON DITCH.

That the name and post office address of the claimant thereto is NEIL BANKSTON, Norwood, Colorado.

That said ditch derives its supply of water from an unnamed gulch tributary to the Dolores River in Section 30, Township 41 North, Range 13 West of the New Mexico Principal Meridian, in Water District No. 69.

That the headgate of said ditch is located at a point on said unnamed gulch whence the Northwest Corner of Section 30, Township 41 North, Range 13 West of the New Mexico Principal Meridian bears North 6° 14' West 3399.1 feet; and the outlet of said ditch where it discharges into Piney Creek is at a point whence the Northwest corner of said Section 30 bears North 40° 22' West 1279.3 feet.

That the depth of said ditch at high water line is 2 feet;

That its width on the top is 3 feet and on the bottom is 2 feet;

That its length is 259.7 feet.

That its grade is 19.91 feet per 1000 feet,  
and its carrying capacity is 26.36 cubic feet of  
water per second of time.

And the Court further finds from the evidence and the Findings and Report of the Referee filed herein, which

Findings and Report are hereby approved and confirmed,-- that said ditch was constructed in August of 1949, but survey thereof was not made until November 9, 1956, and plot prepared and filed with the State Engineer of Colorado April 13, 1962, under File No. 21955.

And the Court Further Finds from the evidence that said ditch was constructed solely for the purpose of carrying water from said unnamed gulch to Rincone Creek in which it is discharged and carried therein to the Belmar Lake Reservoir.

That said reservoir was constructed in 1936 and derived its supply of water from said Rincone Creek and certain of its tributaries above the reservoir dam; that said reservoir at the time of the construction of the Sandstone Ditch had a storage capacity of 445 acres feet, and Rincone Creek and its tributaries in some years had been found to have insufficient flow to supply that amount of water. And it further appears from the record claimant is now planning an enlargement of said reservoir to provide storage for an additional 467 acrefeet of water. That all of said water is necessary for, and can and will be beneficially applied to the irrigation of from 350 to 400 acres of land owned by claimant and used to produce hay and pasture for his livestock. That said water is, and will be, applied to said land through existing distribution ditches thereon. And it further appears from the evidence that said ditch has in the past carried water to its capacity for storage in said reservoir.

And the Court Further Finds from the evidence that there is a conflict in the date of initiation of construction of said ditch in that it is alleged in the state-

ment of the engineer who surveyed said ditch in 1956 that said ditch was constructed in August of 1947, while in the testimony of claimant in 1967 he states it was constructed in 1949. The Court is accepting the date indicated in the statement on the plat as better evidence than the memory of claimant 10 years later.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be permitted to flow into said ditch from said unnamed gulch tributary to the Dolores River, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion, transportation and storage in the Belmax Lake Reservoir, and beneficial use for irrigation on said 350 to 400 acres, and as Absolute Priority No. 57, so much water as will flow therein as now constructed, not to exceed 26.36 cubic feet per second of time, as of appropriation date August 1, 1949.

DOVE CREEK-DOLORES RIVER  
WATER SUPPLY DEVELOPMENT

TOWN OF DOVE CREEK, COLORADO, a Municipal Corporation, Plaintiff.

DIVERSION STRUCTURE NO. 39

Priority No. 58,  
ABSOLUTE,  
AND  
Priority No. 58,  
CONDITIONAL.

JURISDICTION FINDER:

That the name of said Diversion Structure is the DOVE CREEK-DOLORES RIVER WATER SUPPLY DEVELOPMENT.

That the name and post office address of the claimant thereof is the TOWN OF DOVE CREEK, COLORADO, a Municipal Corporation, Dove Creek, Colorado.

That said diversion structure derives its supply of water from the underflow in the bed of the Dolores River, in Water District No. 69.

That said water is diverted by means of two wells which are sunk in the bed of said Dolores River to an approximate depth of 60 feet and equipped with pumps having a capacity of approximately 0.39 of a cubic foot of water per second of time.

And the Court Further Finds from the evidence and the Findings and Report of the Referee filed herein, -which Findings and Report are hereby approved and confirmed, -that said diversion and transportation system consists of said two wells and pumps which deliver water through the pumphouse to a tank located 132 feet west of said pumphouse. From which tank the water is pumped through a 6 inch pipeline of welded steel 25,276.3 feet long to two storage tanks at the edge of the town of Dove Creek, said tanks having a combined storage capacity of approximately 400,000

gallons; and from thence the water enters the distribution system of the Town.

The Court further finds that the claimant filed 4 different plats of said diversion system as exhibits at the hearings on said claim, and there appears to be a discrepancy therein as to the location of the point of diversion. And subsequent to its discovery an amended statement of claim was filed in this cause containing the correct description, which conforms to the description in Claimants Exhibit No. 1-3, and is as follows:

"The headgate or point of diversion is located at a point on the west bank of the Dolores River from which it derives its supply of water, whence the N.E. corner of the S.E. 1/4 of Section 26, Township 41 North, Range 16 West of the U.S. Mexico Principal Meridian bears South 51° 30' East a distance of 7400 feet."

The Court further finds that the above described point is actually the location of the tank adjacent to the pump house, and the actual point of diversion is located about 175 feet east thereof.

That from the tank adjacent to the pumphouse, -located at Station 52 on the plat, which is at elevation 6105 feet,-the water is pumped to the high point on said line at Station 12, elevation 7055 feet, or a rise of 950 feet. From which last point it flows by gravity to the storage tanks at the town through a 6 inch pipeline on an average grade of 16.4 feet per 1000 feet.

And the Court further finds that said pipeline has a size and grade sufficient to carry 1.00 cubic foot of water per second of time. That the present amount of water carried therethrough, -0.39 of a second foot,-is limited not by the

pipeline, but by the delivery capacity of the pumps.

And the Court Further Finds from the evidence that for many years prior to 1950 claimant, -the Town of Dove Creek, obtained its supply of water from shallow wells drilled within or adjacent to the town. That as the town grew and more water was required, the ground water level dropped and the quality of the water became unsatisfactory for domestic use because of increased alkali and iron content. As a result, in January or February of 1951 claimant employed an engineer for the purpose of planning, designing and surveying a new source of supply and a new diversion system. And on July 16, 1951 said engineer commenced the survey of the present system; and prepared a plat and statement thereof which was filed in the office of the state engineer of Colorado on August 3, 1951 under File No. 1C791. That Claimant's Exhibit "A" is a photocopy of said plat and statement.

That said pipeline, and other installations, were diligently completed, and the records of the town show the first water was diverted by said said water supply development system and used in the town of Dove Creek for municipal and domestic purposes in the amount of 0.39 of a cubic foot per second of time, and has been so used ever since.

That the evidence further shows, from the records of the Town, in 1954 there were 139 users from the water system, and at the present time, -1967, there are 279; that the population of the town in 1960 was 702, and in 1966 it had increased to 900. That in addition there are a number of water connections serving people adjacent to the town.

And the Court Finds from the evidence that at times in the season of heavy use the 0.39 of a cubic foot per second is not sufficient to meet the demand and restrictions have to

be placed on lawn watering.

The Court Further Finds from the evidence and exhibits that said system was designed for a capacity of 1.00 cubic foot of water per second of time and, with the exception of pumping facilities, was so constructed. That this ultimate capacity was fixed upon the projected probable population and business growth of the town. And from the beginning it was the intention and purpose of claimant, within a reasonable time, to provide additional pumps to deliver through the system the additional 0.69 of a cubic foot of water per second of time. As shown above the town has had in recent years a substantial increase in population and water requirements. And the evidence further shows the town is located in the general area of uranium mining in Western Colorado, which is presently recovering from its recent decline and will undoubtedly have a substantial effect on future requirements for water within and adjacent to the town.

The Court also Finds from the evidence that the claimant is now improving its distribution system and extending lines to portions of the town not previously served, and is of the opinion that the claimant has shown facts and conditions which warrant the award of a conditional priority in the amount of 0.69 of a cubic foot of water per second which will relate back to the initiation of survey in February, 1951.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY  
I. N. COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be permitted to flow through said water supply development system from the underflow in the bed of the Dolores River, for the benefit of the parties lawfully entitled thereto under

and by virtue of appropriation by construction, diversion and beneficial use for Municipal and domestic use as aforesaid, and as Absolute Priority No. 58, so much water as will flow therethrough as now constructed, not to exceed 0.39 of a cubic foot of water per second of time, as of appropriation date February 16, 1951.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into and through said water supply development system from the underflow in the bed of the Dolores River, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlarged diversion diversion therethrough, and application to the beneficial uses aforesaid, and as Conditional Priority No. 58, so much water as will flow therethrough as now constructed with added pumping facilities, not to exceed 0.69 of a cubic foot per second of time, CONDITIONED, however, upon the installation of said additional pumping facilities, the diversion of said water and its application to beneficial use for Municipal and domestic purposes, as aforesaid, within the time and in the manner provided by law.

GARNER RESERVOIR

MELVIN J. ADAMS and FRED HAMILTON, Claimants.

STORAGE STRUCTURE NO 6

Priority No. 59,  
ABSOLUTE.  
and  
Priority No. 70,  
CONDITIONAL.

COURT FINDS:

That the name of said storage structure is the GARNER RESERVOIR.

That the names and post office addresses of the claimants thereof are MELVIN J. ADAMS, Blanding, Utah, and FRED HAMILTON, Dolores, Colorado.

That said reservoir derives its supply of water from Bear Creek, a tributary of Disappointment Creek, through the Garner Ditch, in Water District No. 69.

That the initial point of survey of the high water line of said reservoir is located at a point whence the Southwest corner of Section 2, Township 41 North, Range 14 West of the New Mexico Principal Meridian bears South 78° 35' West 1597 feet.

That the maximum height of the dam to said reservoir is 18 feet.

And the total capacity thereof as now constructed is 36.97 acre feet of water.

That said stored water is used for irrigation and live stock watering purposes.

That map and statement thereof has been filed in the office of the State Engineer of Colorado under File Number 21706.

And the Court further finds from the evidence and

Claimants' Exhibit #3, Plan and statement of the Garner Reservoir, -and from the Findings and Report of the Referee filed herein, -which Findings and Report are hereby approved and confirmed, -that work was started on said reservoir by survey on June 23, 1960, and that actual construction of the dam was completed with due diligence, and water has been stored therein to capacity each year, when available, ever since and used for the irrigation of 35 acres of land belonging to claimants and located in the Southwest Quarter of the Southwest Quarter of Section 11, Township 41 North, Range 14 East of the New Mexico Principal Meridian.

That the land irrigated is black sandy loam, and is irrigated for the growth of pasture for livestock belonging to claimants primarily. However the evidence shows that some hay is cut thereon.

And it further appears from the evidence that when said land is being pastured, the livestock is dependent upon the reservoir water for drinking purposes.

And the Court Further Finds from the evidence that it is the intention and announced purpose of the claimants to enlarge said reservoir and store additional water therein for the irrigation of an additional 25 acres of land susceptible of irrigation thereunder. Just when said intention became fixed in the minds of the claimants is not disclosed, but it is evident it existed prior to the time of filing the claim statement in this proceeding for the adjudication of said reservoir, as a request for an award of said additional water is contained therein.

And the Court Further Finds that the evidence does not contain any direct reference to the extent of the physical

enlargement other than sufficient to impound water for the irrigation of said additional 25 acres. And the Court Further Finds that it is difficult from the evidence to determine the approximate duty of water in this area. That the claimant Melvin J. Adams has introduced evidence on a large number of water right claims filed in this proceeding, and there is a lack of uniformity in the amount of water claimed or used under the various claim statements. That in this particular claim 36.97 acre feet of water are asked, and have been used for the irrigation of 35 acres,-or a little more than one acre foot per acre, and in the opinion of the Court this amount is far short of sufficient for proper all season irrigation. Further, the Court is not apprised of the feasible extent of the enlargement, either as to water supply, or cost relation to resulting benefit. Therefore, if he is justified in making an additional award to said reservoir enlargement in any amount, he is impelled to the conclusion that it must be in reasonable proportion to the amount per acre awarded awarded under the original construction, and not in accordance with what he considers the ordinary duty of water. Applying this rule liberally, the Court Finds that said conditional award should be limited to 27.00 acre feet of water for the irrigation of said 25 additional acres.

And the Court Further Finds that there is no evidence in the record as to the exact time the intention to enlarge said reservoir became fixed in the mind of claimants, and there being no intimation in the statement of claim on the part thereof that there was at the time of the survey any intention to make such enlargement, he is impelled to accept the only certain date of its existence,-that of the prepara-

tion and filing of the statement of claim in this proceeding, to-wit: July 6, 1967, with the proviso that it be held to be of equal right to available water with all other conditional awards herein of the same appropriation date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and be stored therein, from said Bear Creek, a tributary of Disappointment Creek, through the Garner Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, diversion, storage and application to beneficial use for the irrigation of said 35 acres, and as Absolute Priority No. 59, so much water as can be stored therein as now constructed, not to exceed 36.97 acre feet, as of Appropriation Date June 23, 1960.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into said reservoir, and be stored therein, from said Bear Creek, a tributary of Disappointment Creek, through the Garner Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlarged construction, diversion, storage and application to beneficial use for the irrigation of an additional 25 acres, and as Conditional Priority No. 70, so much water as can be stored therein as proposed to be enlarged, not to exceed 27.00 acre feet of water, as of Appropriation Date July 6, 1967. CONDITIONAL. However, upon the completion of said enlarged construction, the diversion, storage and application of said water as proposed

within the time and in the manner provided by law.

PROVIDED, that said priority is of equal right to available water with Priorities 69 and 71 awarded herein when and if diversions thereby conflict.

GAINER DITCH

MELVIN J. ADAMS, Claimant.  
FRED HALIDAY, Claimant.

DIRECT FLOW  
DIVERSION STRUCTURE NO. 40

Priority No. 60,  
ABSOLUTE.

THE COURT FINDS:

That the name of said diversion structure is the  
GAINER DITCH.

That the name and address of the claimant thereof  
is MELVIN J. ADAMS, Blanding, Utah, and FRED HALIDAY, Norwood,  
Colorado.

That said ditch derives its supply of water from  
Bear Creek, a tributary of Disappointment Creek, in Water  
District No. 69.

That the headgate of said ditch is located at a  
point on the East bank of said Bear Creek whence the North-  
west corner of Section 11, Township 41 North, Range 14 West  
of the New Mexico Principal Meridian bears North 16° 10'  
West 2277 feet.

That as shown by Claimants' Exhibit "B", -Plat and  
Statement of said ditch, the depth thereof at high water line  
is 1.5 feet;

The bottom width of the ditch is 2 feet;

The width of the ditch at high water line is 4 feet;

The length of the ditch is 1020 feet;

And the grade thereof is 11.3 feet per 1000 feet.

That the carrying capacity of the ditch is 6.75  
cubic feet of water per second of time.

And the Court Further Finds from the evidence and  
the Findings and Report of the Referee filed herein, -which  
Findings and Report are hereby approved and confirmed, -that

work of construction was commenced on said ditch by survey on June 23, 1960. That said ditch was surveyed in conjunction with the Garner Reservoir and the distribution ditch from the reservoir to the land irrigated as one coordinated system of diversion, storage and delivery. And the Court Finds that no decree to the distribution ditch is necessary or requested as it apparently has no source of supply other than the storage water in the Garner Reservoir.

And the Court further Finds from the evidence that the Garner Ditch irrigates no land directly and is used solely for the purpose of supplying water to the Garner Reservoir which is used for the irrigation of approximately 35 acres of land. That the present storage capacity of said reservoir is 36.97 acre feet, and the Court Finds that the carrying capacity of the ditch, or 6.75 cubic feet of water per second of time is reasonably necessary to insure filling the reservoir in years of short supply of flood water.

The Court Further Finds that claimants are in the livestock business and said land is used to produce hay and pasture for said livestock a portion of the year, and during such time said water is used to water said stock.

And the Court Further Finds from the evidence in connection with the Garner Reservoir, that claimants have approximately 25 additional acres of land thereunder susceptible of irrigation for which they have no water; and it is their intention and purpose to construct an enlargement of said reservoir sufficient to place said 25 acres under irrigation. However, the record contains no evidence of any intention to enlarge this Garner Feeder Ditch, and the Court assumes experience in the past has shown in most years no enlargement will be necessary; and to the extent that said

enlargement of the Garner Reservoir is completed with due diligence, not to exceed 27.00 acre feet capacity, the water provided under this diversion award shall be made applicable, to the extent available for the filling thereof.

IT IS THEREFORE ORDERED, ADJUDGED AND DECIDED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, -there be allowed to flow into and through said ditch from said Bear Creek, a tributary of Disappointment Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and storage in said Garner Reservoir for irrigation and stockwatering purposes, and as Absolute Priority No, 60, so much water as can be carried therein as now constructed, not to exceed 6.75 cubic feet per second of time, as of Appropriation Date July 23, 1960.

MORRISON DITCH

MELVIN J. ADAMS, Claimant.

DITCH FLOW  
DIVERSION STRUCTURE NO. 41

Priority No. 61,  
ABSOLUTE,

and  
Priority No. 62,  
ABSOLUTE.

THE COURT FINDS:

That the name of said diversion structure is the MORRISON DITCH.

That the name and post office address of the claimant thereof is MELVIN J. ADAMS, Blanding, Utah.

That said ditch derives its supply of water from Morrison Creek, a tributary of Disappointment Creek, in Water District No. 69.

That the headgate thereof is located at a point on the south bank of said Morrison Creek whence the Northwest corner of Section 36., Township 42 North, Range 14 West of the New Mexico Principal Meridian bears North 63° 36' West 3371 feet.

That the depth of said ditch at high water line is 1.5 feet;

That the width of said ditch at high water line is 3.5 feet;

That the bottom width thereof is 2.0 feet;

That its length is 2560 feet;

That its grade is 5.0 feet per 1000 feet, and

Its carrying capacity is 11.9 cubic feet of water per second of time.

And the Court Further Finds from the evidence and the Findings and Report of the Referee filed herein, which

Findings and Report are hereby approved and confirmed, -that work of construction was started on said ditch by survey on August 24, 1960, and construction was diligently completed and water diverted by said ditch and applied to the beneficial uses hereinafter described.

And the Court Further Finds that said ditch serves a dual purpose. That primarily it was constructed for the purpose of conveying water to the Morrison Reservoir, which is an off-stream reservoir. However, the evidence also shows that between the headgate of said ditch and the Morrison Reservoir, water is diverted therefrom for the purpose of direct flow irrigation on approximately 15 acres of land located in the West half of Section 36, Township 42 North, Range 14 West of the New Mexico Principal Meridian.

And the evidence further shows that the top soil of said acreage is a black, sandy loam and requires more than the usual amount of water for proper irrigation. And further that following the spring run-off the supply of water in said Morrison Creek, -the source of supply for said ditch, -is very limited. And the Court is therefore of the opinion that for the proper irrigation of said 15 acres 1.50 cubic feet of water per second of time is necessary if and when available for diversion under Priority No. 62 herein.

And the Court Further Finds from the evidence that the total storage capacity of the Morrison Reservoir, including the enlargement thereof, -for the filling of which said ditch was principally constructed, -is 116.32 acre feet; and that for said purpose it will require, during the short runoff period while water is available in said Morrison creek, the full carrying capacity of said ditch, or 11.90 cubic feet

of water per second of time. While this is an apparent over-decree, in practice no conflict is apt to occur as the reservoir will ordinarily be filled prior to the necessity of diversion by decree. However, in the event a conflict should occur, the diversion by said ditch for both irrigation and storage purposes shall be limited at all times to 11.90 cubic feet of water per second of time, -the present carrying capacity of the ditch as shown by the evidence.

And the Court further finds that claimant is in the stockraising business. That said direct flow and storage tanks are used for the irrigation of hay and pasture land upon which claimant frequently runs large numbers of livestock, and at such times the water from said reservoir and ditch are used for stockwatering purposes, and are necessary therefor.

And the Court further finds the evidence shows there is no other water available for the irrigation of this particular acreage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECIDED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be permitted to flow into and through said ditch from said Harrison Creek, a tributary of Disappointment Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and application to beneficial use for the irrigation of said 15 acres, so much water as will flow therein as now constructed, not to exceed 1.50 cubic feet per second of time, as Priority No. 62, and appropriation date August 24, 1960.

And IT IS FURTHER ORDERED, ADJUDGED AND DECIDED BY

TO COUNT that, subject to said several limitations and provisions, there be allowed to flow into and through said ditch from said Morrison Creek, a tributary of Disappointment Creek, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation, diversion and storage in said Morrison Reservoir as now constructed and proposed to be enlarged, and application to beneficial use for irrigation and stockwatering purposes, as aforesaid, and as Priority No. 61, so much water as will flow therein as now constructed, not to exceed 11.90 cubic feet per second of time, as of appropriation Date August 24, 1960. PROVIDED that when said ditch is being used for the simultaneous diversion of water for irrigation by direct flow on said 15 acre, and for storage in said Morrison Reservoir and Embayment, the combined diversion shall not exceed 11.90 cubic feet of water per second of time. AND PROVIDED FURTHER that said storage and direct flow irrigation priorities are of the same date and right to available water.

MORRISON RESERVOIR

MALVIN J. ADAMS, Claimant.

STORAGE STRUCTURE NO. 7

Priority No. 63,  
ABSOLUTE,  
AND  
Priority No. 64,  
CONDITIONAL.

JUDGMENT FINDS:

That the name of said storage structure is the MORRISON RESERVOIR.

That the name and post office address of the claimant thereof is MALVIN J. ADAMS, Blanding, Utah.

That said reservoir derives its supply of water from Morrison Creek, a tributary of Disappointment Creek, through The Morrison Ditch, in Water District No. 69.

That the initial point of survey of the high water line of said reservoir is located at a point whence the Northwest corner of Section 36, Township 42 North, Range 14 West of the New Mexico Principal Meridian bears North 30° 36' feet 2661 feet.

That the maximum height of the dam of said reservoir is 22 feet.

That the total capacity of the reservoir is 69.01 acre feet.

And the Court Further Finds from the evidence and the Findings and Report of the Referee filed herein, which Findings and Report are hereby approved and confirmed, - That work was commenced on said reservoir by survey on the 24th day of August, 1960.

That said reservoir dam was diligently completed to the designed height and water stored therein to the water mark of 12 feet, at which point the engineer taking the sur-

vay computed the capacity of the reservoir at 69.01 acre feet.

And the Court Further Finds from the evidence that, while the statement of claim alleges "That the number of acres being irrigated under said reservoir is 15 acres, except that by enlargement of said reservoir an additional 10 acres may be brought under said reservoir at a future date," said allegation does not actually refer to an enlargement of the reservoir as it had already been completed to its designed capacity of 69.01 acre feet, but that water had not as yet been diverted from the reservoir and applied to the irrigation of said additional acreage, which this claimant now proposes to do with due diligence.

And the Court therefore Finds that said performance entitles the claimant to an absolute award of sufficient water to said reservoir for the irrigation of said 15 acres, and to a conditional award thereto of sufficient water for the future irrigation of said 10 acres.

That all of said land is located in the West half of Section 36, Township 42 North, Range 1 $\frac{1}{4}$  West of the New Mexico Principal Meridian in Dolores County, Colorado.

And the Court Further Finds that the water stored, or to be stored, in said reservoir under said absolute and conditional priorities, should be divided between them in proportion to the acreage irrigated by each thereof; that is, approximately 42.00 and 27.00 acre feet.

And the Court Further Finds from the plat of the Garrison Reservoir and Morrison Ditch, -Exhibit "B-2", introduced by claimant in evidence, -that the engineer also included therewith a plat and statement of the distribution ditch

carrying water from said reservoir, showing its dimensions, grade and carrying capacity, and that same as now constructed is of more than sufficient capacity to carry the water necessary for the irrigated acreage under the reservoir as originally constructed and under the enlargement thereof as proposed in the separate statement of claim filed in this proceeding.

That with regard to said enlargement the Court Finds that subsequent to the construction of said reservoir in accordance with the original plat, the claimant caused to be made another survey on August 26, 1961 for the enlargement thereof to the extent of 47.31 acres feet, which storage will be used on an additional 55 acres of land. That for said enlargement claimant has filed in this proceeding a separate statement of claim. That this additional water will also be released from the reservoir through the same distribution system and used on land adjacent to the land irrigated by water from the original reservoir; but it appears from the claim statement there is a great disproportion in the amount of water per acre claimed under the original and proposed enlarged construction.

However, the Court Further Finds from the record herein that there are no intervening priorities between the appropriation dates of said original reservoir and its proposed enlargement, or the feeder ditch therefore. And the Court therefore Finds that claimant is entitled to treat these two Priorities as one in the distribution to the lands above referred to in order to achieve the most effective use thereof if and when said conditional priority is made absolute.

And the Court further Finds that claimant is in the stockraising business, and at times pastures his live-stock on said irrigated, and to be irrigated lands. That

at said times the water stored in said reservoir and diverted therefrom through said distribution ditch is used for watering said livestock.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and be stored therein, from said Morrison Creek, a tributary of Disappointment Creek, through the Morrison Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, storage and application to beneficial use for the irrigation of said 15 acres and for stockwatering purposes, and as Absolute Priority No. 63, so much water as can be stored therein as now constructed, not to exceed 42.00 acre feet, as of Appropriation Date August 24, 1960.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into said reservoir, and to be stored therein, from said Morrison Creek, a tributary of Disappointment Creek, through the Morrison Ditch, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, storage and proposed enlarged application to beneficial use for the irrigation of said additional 10 acres of land thereunder not presently irrigated, as well as for stockwatering purposes, and as Conditional Priority No. 64, so much water as can be stored therein as now constructed, not to exceed 27.00 acre feet, as of Appropriation Date August 24, 1960. CONSIDERATION, However, upon the completion of said storage and

application to beneficial use for the irrigation of said additional acreage within the time and in the manner provided by law.

PROVIDED that if and when said priority is made absolute, the diversion thereunder and under Priority 63, and 65, may be administered as one to all the lands referred to above in order to achieve the most effective use thereof.

ENLARGED MORRISON RESERVOIR

MELVIN J. ADAMS, Claimant.

WATER STRUCTURE No. 7

Priority No. 65,  
CONDITIONAL.

THE COURT FINDS:

That this is an Enlargement of the Morrison Reservoir which was given Structure No. 7, and awarded 69.00 acre feet of water as Priorities 63 and 64 herein.

That the name and post office address of the claimant thereof is Melvin J. Adams, Blodding, Utah.

That said reservoir and the enlargement derives its supply of water from Morrison Creek, a tributary of Disappointment Creek, through the Morrison Ditch, in Water District No. 69.

That the initial point of survey of the high water line of said reservoir is located at a point whence the Northeast corner of Section 36, Township 42 North, Range 14 West of the New Mexico Principal Meridian bears North 50° 21' East 363 $\frac{1}{4}$  feet.

That the total capacity of said reservoir as the same is now enlarged is 116.32 acre feet. That the original reservoir was designed and constructed with a storage capacity of 69.01 acre feet, and the enlarged construction has provided capacity for an additional 47.31 acre feet.

That the maximum height of the dam after the enlargement is 22 feet.

That the plat and statement of the enlarged reservoir was filed in the office of the State Engineer of Colorado on December 5, 1961, under Filing No. 21707 A.

And the Court Further Finds from the evidence and the Findings and Report of the Referee filed herein, which Findings and Report are hereby approved and confirmed, that work was started on said enlargement by survey on August 26, 1961, and the actual construction of the enlargement to the reservoir was completed with due diligence.

And the Court Further Finds that the water stored in the reservoir as originally constructed, -69.01 acre feet, - was used for the irrigation of 15 acres, and intended to be used on an additional 10 acres.

And that the evidence further shows the water to be impounded in the enlargement of said reservoir, -47.31 acre feet, - is to be used for irrigation on an additional 55 acres, all of which land is located in the West half of Section 36, Township 42 North, Range 24 West of the New Mexico Principal Meridian, and is of the same general texture and character.

And the Court Further Finds from the Findings and Report of the Referee, and the evidence, that the amount of water per acre claimed under the original construction, and under the enlarged construction is greatly disproportionate; however, while the dates of initiation of appropriation are a year apart, there are no intervening priorities; and it is the opinion of the Court, and he so finds, that in the use of the water stored in said reservoir and enlargement under priorities 63, 64 and 65, claimant shall be permitted to apply it as a unit, regardless of the area or areas of application, in order make the most economical and effective use possible thereof.

That the evidence shows claimant is in the stock-raising business, and the water stored in said reservoir is used for the irrigation of hay and pasture land, and so far

as the evidence shows has no other water for use thereon. That at such time or times as he is pasturing livestock on said land this water is also necessary, and used for stock watering purposes.

And the Court Further Finds that, while the claimant asks for an absolute decree for said 47.31 acre feet of water, the statement of claim alleges "that by additional enlargement of said reservoir, an additional 65 acres could be brought under said reservoir and it is proposed that such enlargement will be hereafter accomplished", the testimony of the claimant is that the enlargement has actually been completed and that all that remained to be done was the application of said water to the additional land. Under these circumstances there still is not sufficient basis for the award of an absolute Priority. The three conditions necessary for that are completion of construction, storage of the water, and its application to the beneficial uses proposed. Accordingly the award will be limited to a conditional priority.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said enlargement of said reservoir, from Morrisson Creek, a tributary of Disappointment Creek, through the Morrisson Ditch, for the benefit of the parties lawfully entitled thereto, by virtue of appropriation by construction, enlarged storage and proposed additional application to beneficial use for irrigation on said 65 acres of land, and as additional Priority No. 65, so much water as can be stored therein, not to exceed 47.31 acre feet, as of appropriation date August 26, 1961. CONDITIONED, However, upon the

construction of storage of water in said enlargement, and its application to the proposed beneficial uses within the time and in the manner provided by law.

AND PROVIDED that when said priority is made absolute, the diversion thereunder and under Priorities 63 and 64 may be administered as one to all the lands referred to above in order to achieve the most effective use thereof.

BUCK PASTURE RESERVOIR

MELVIN J. ADAMS, Claimant.

STORAGE STRUCTURE NO. 6

Priority No. 66,  
Absolute  
and  
Priority No. 69,  
Conditional.

THE COURT FINDS:

That the name of said storage structure is the  
BUCK PASTURE RESERVOIR.

That the name and post office address of the claim-  
ant thereof is MELVIN J. ADAMS, Blanding, Utah.

That said reservoir derives its supply of water  
from what is designated as "A side drainage, a tributary to  
Beaver Creek", which from its location appears to be di-  
rectly tributary to the Dolores River, in Water District No. 69.

That the initial point of survey of the high water  
line of said reservoir is located at a point whence the North-  
east corner of Section 32, Township 41 North, Range 13 West  
of the New Mexico Principal Meridian bears North  $76^{\circ} 21'$  East  
1694 feet.

That the maximum height of the dam to said reservoir  
is 22 feet;

That the total capacity of the reservoir as con-  
structed is 53.94 acre feet.

And the Court further finds from the evidence and  
Affidavit and Report of the Referee filed herein, which Find-  
ings and Report are hereby approved and confirmed, that work  
of construction was commenced on said reservoir by survey on  
July 1, 1966. However, the actual construction was commenced  
on July 1, 1963.

That the plat and statement of said reservoir was filed in the office of the State Engineer of Colorado on August 2, 1956, under File No. 22839.

That said reservoir was diligently completed to its present storage capacity of 53.94 acre feet, and water has been stored therein to capacity and applied to beneficial use for irrigation on 45 acres of land owned by claimant, and on which he grows hay and pastureage.

And the Court Further Finds that claimant is in the stockraising business, and said hay and pasture grass is used for feeding his own stock. That when said stock is grazing upon said acreage it is dependent upon the reservoir for stock watering purposes.

And the court Further Finds that Claimant's statement of claim alleges "that the number of acres being irrigated under said reservoir is 45 acres, except that by enlargement of said reservoir an additional 30 acres has been brought under the reservoir for irrigation therefrom and it is proposed that such additional acreage will be brought under said reservoir at some future date."

The above statement appears to be inconsistent, however, it is clarified by claimant's testimony, which is that he has an additional 30 acres of land lying under the reservoir which could be irrigated with water from it, and that it is his intention in the near future to enlarge the reservoir, store additional water therein and use it for the irrigation of said 30 acres. That he is asking the award of a conditional priority for that purpose.

That all of said land, irrigated and to be irrigated is located in the Northeast Quarter of Section 32,

Township 41 North, Range 13 West of the New Mexico Principal Meridian.

And the Court Further Finds that while the evidence shows it is the present intention of claimant to enlarge said reservoir and store additional water therein for the irrigation of said additional acres of land thereunder and susceptible of irrigation thereby, neither the evidence nor the plat of said reservoir show said intention existed when the survey was made; nor does the evidence indicate just when said intention was conceived in the mind of the claimant. That it existed at the time the statement of claim was prepared for filing in this proceeding is evident from the fact it is contained therein. And the record shows the statement of claim was sworn to before a notary public on July 6, 1967.

And the Court Further Finds that the evidence does not contain any direct reference to the extent of such enlargement other than sufficient to impound water for the irrigation of said 30 acres. And the Court Further Finds it is difficult from the evidence to find or determine the duty of water for irrigation purposes in this area. This claimant has introduced on a large number of claims in this proceeding, and there is no uniformity in the amount of water per acre requested therein. That in this present claim approximately 54.00 acre feet of water are asked for, and have been used on, 45 acres of land, or approximately 1.20 acre feet per acre, as an absolute decree. In the Court's opinion this will furnish far from an adequate all season irrigation on said land. Further, that the Court is not apprised of the feasible extent of the enlargement, either as to physical environment, water supply or cost relation to benefit resulting. Therefore, if he is just-

ified by the evidence in making a conditional award to said reservoir in any amount, he is impelled to the conclusion that he must make the decision as to the amount in accordance with the general implications of the evidence in relation to the award made thereto under the application for absolute decree by reason of the original construction, and not in accordance with what he considers the ordinary duty of water for irrigation purposes. In other words, the conditional award should be in reasonable proportion, per acre, to the amount awarded under the Absolute Priority. And using this measure, the Court Finds that the conditional award should be limited to 36.00 acre feet of water.

And the Court further Finds that for the irrigation of the hereinabove mentioned 75 acres of land the claimant has no supply of water other than that contained in said reservoir as originally constructed and as proposed to be enlarged.

IT IS THEREFORE ORDERED, ADJUDGED AND DECreed by THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and be stored therein, from side drainage tributary to Beaver Creek, a tributary of the Dolores River, for the benefit of the parties lawfully entitled thereto, under and by virtue of Original Construction, the storage of water therein and its application to beneficial use for the irrigation of said 45 acres and for stock watering purposes, and as Absolute Priority No. 66, so much water as can be stored therein as now constructed, not to exceed 53.0 $\frac{1}{4}$  acre feet, as of Appropriation Date July 1, 1963.

AND IT IS FURTHER ORDERED, ADJUDGED AND DISPOSED  
BY THE COURT that, subject to said several limitations and  
provisions, there be allowed to flow into said reservoir,  
and be stored therein, from said side drainage tributary to  
Beaver Creek, a tributary to the Dolores River, for the bene-  
fit of the parties lawfully entitled thereto, under and by  
virtue of said proposed enlarged construction thereof, stor-  
age of water therein and its application to beneficial use  
for the irrigation of said additional 30 acres, and for  
stockwatering purposes, and as Conditional Priority No. 69,  
so much water as can be stored in said enlargement, not to  
exceed 36.00 more feet, as of appropriation date July 6, 1967.  
CONDITIONED, However, upon the completion of said enlargement  
as proposed, the storage of said water therein, and its appli-  
cation to the beneficial uses aforesaid within the time and  
in the manner provided by law. PROVIDED that said priority  
shall be of equal date and right to available water with  
Priorities 70 and 71 herein.

DURHAM RESERVOIR

KELVIN J. ADAMS, Claimant.

STORAGE STRUCTURE NO. 9

Priority No. 68,  
ABSOLUTE,  
and  
Priority No. 71  
CONDITIONAL.

THE COURT FINDS:

That the name of said storage structure is the DURHAM RESERVOIR.

That the name and post office address of the claimant thereof is KELVIN J. ADAMS, Blanding, Utah.

That said reservoir derives its supply of water from side drainage thereto, or to a stream tributary to Disappointment Creek, thence into the reservoir, in Water District No. 69.

That the initial point of survey of the high water line of said reservoir is located at a point whence the Northeast corner of Section 16, Township 41 North, Range 13 West of the new Mexico Principal Meridian bears North 39° 50' East 1985 feet.

That the maximum height of the dam is 19 feet.

That the storage capacity of said reservoir is at the 14 foot level 78.75 acre feet.

That map and statement of said reservoir was filed in the office of the State Engineer of Colorado on the 2nd day of August 1966, under File No. 22838.

And the Court Further Finds from the evidence and the Findings and Report of the Referee filed herein, -which findings and report are hereby approved and confirmed, -that work of construction was commenced on said reservoir by survey on July 14, 1966, and that claimant thereafter proceeded

diligently with actual construction thereof to completion and water was stored therein to its actual capacity of 78.75 acre feet as computed by the engineer making the survey.

That said stored water was then applied to the irrigation of approximately 50 acres of land located in the Northeast Quarter of the Northwest Quarter, and the Southeast Quarter of the Northwest Quarter of Section 11, Township 41 North, Range 14 West of the New Mexico Principal Meridian, upon which land claimant grows hay and pasture for feeding livestock. And the Court Further Finds that said water is no more than sufficient for the proper irrigation of said land.

And it further appears claimant is engaged in the livestock business and uses said land at times for the pasturing of his stock, and that during such times said livestock is dependant upon said reservoir water for drinking purposes.

The Court Further Finds that claimant's statement of claim alleges "That the number of acres being irrigated under this reservoir is 50 acres and an additional 25 acres may be brought under the dam by subsequent enlargement for which claim is hereby also made."

That the evidence of claimant is that he can put an additional 20 acres under irrigation with water from said reservoir, which he proposes to do by means of an enlargement thereof in the immediate future. And the evidence of claimant further shows that he has no other water for the irrigation of said lands than that of the Dunham Reservoir and its proposed enlargement.

And the Court Finds that accordingly the claimant is asking for an absolute decree to the right to store and use 78.75 acre feet of water, -the capacity of the reservoir as now constructed, and a Conditional decree for the right to use

sufficient water to irrigate said additional 20 acres of land.

That while the evidence shows it is the present intention of claimant to enlarge said reservoir and store additional water therein for the irrigation of said additional 20 acres of land thereunder and susceptible of irrigation thereby, neither the evidence nor the plat and statement of said reservoir show said intention existed when the survey was made, nor does the evidence indicate just when said intention was conceived in the mind of the claimant. That it existed at the time the statement of claim was prepared for filing in this proceeding is evident from the fact that it is contained therein; and the record shows the statement of claim was sworn to before a Notary public on July 6, 1967.

And the Court further finds that the evidence does not contain any direct reference to the extent of such physical enlargement other than sufficient to impound water water for the irrigation of said 20 acres. And the Court further finds that it is difficult to find from the evidence the duty of water for irrigation purposes in this area. The claimant has introduced evidence on a large number of claims in this proceeding, and there is no uniformity in the amount of water per acre requested therein. That in this present claim 76.75 acre feet of water are asked for, and apparently have been used on, 50 acres of land, or approximately 1.56 acre feet per acre, as an absolute decree. In the Court's opinion this will not furnish an adequate all season irrigation on said land. Further the Court is not apprized of the feasible extent of the enlargement, either as to physical environment, water supply, or cost relation to benefit resulting. Therefore, if he is justified by the evidence in making a conditional award in any amount, he is impelled to the conclusion that he must

make the decision as to the amount in accordance with the general implications of the evidence in relation to the award made thereto under the application for absolute decree by reason of the original construction, and not in accordance with what he considers the ordinary duty of water. In other words, the conditional award should be in reasonable proportion per acre to the amount awarded under the absolute priority. And using this measure, the Court finds that the conditional award should be limited to 32.00 acre feet of water.

IT IS THEREFORE ORDERED, ADJUDGED AND DECIDED BY THE COURT that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir, and be stored therein, from said side drainage around the perimeter thereof, or into a tributary of Disappointment Creek and then into the reservoir, for the benefit of the parties lawfully entitled thereto, under and by virtue of original construction, diversion and storage, and application to beneficial use for the irrigation of said 50 acres and for stockwatering purposes, as Absolute Priority No. 68, as much water as can be stored therein as originally constructed, not to exceed 75.75 acre feet, as of Appropriation date July 14, 1955.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECIDED BY THE COURT that, subject to said several limitations and provisions, there be allowed to flow into said reservoir, and be stored therein, from said side drainage around the perimeter thereof, or into a tributary of Disappointment Creek, and thence into the reservoir, for the benefit of the parties lawfully entitled thereto, under and by virtue of said enlarged construction thereof, storage of water therein, and its ap-

plication to beneficial use for the irrigation of said additional 20 acres, and for stockwatering purposes, and as Conditional Priority No. 71, so much water as can be stored in said enlargement as proposed, not to exceed 32.00 acre feet, as of appropriation date July 6, 1967. CONDITIONED, However, upon the completion of said enlargement as proposed, the storage of said water and its application to the beneficial uses aforesaid within the time and in the manner provided by law.

And it now appearing to the Court that the referee herein has lodged with the Clerk of the District Court of San Miguel County, Colorado all matters and things relating to this adjudication proceeding, including Statements of Claim, Testimony, Exhibits, Abstract of Testimony, Findings and Report of the Referee, and Proposed Decree; and that due notice has been given to all claimants who have appeared and filed claim statements herein, and offered testimony thereon, through their attorneys of record, of the lodging thereof, and of the time in which to file objections thereto, as well as the date on which said Findings and Proposed Decree shall be presented for approval, and any and all objections thereto heard and resolved.

AND NOW, on this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1968, it appearing to the Court that \_\_\_\_\_, objections have been filed GVK

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Proposed Decree be, and same hereby is, approved and confirmed in its entirety, and that same be, and hereby is, declared to be the Decree of this Court.

BY THE COURT:

George V. Kemof  
Judge.

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